IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 421 of 2002

with
APPEAL FROM ORDER No.69 OF 2003

with
CIVIL APPLICATION No.4429 OF 2004
in
APPEAL FROM ORDER No.421 of 2002

with
CIVIL APPLICATION No.4430 2004
in
APPEAL FROM ORDER No.421 of 2002

with
CIVIL APPLICATION No.611 OF 2003
in
APPEAL FROM ORDER No.421 of 2002

with
CIVIL APPLICATION No.2526 OF 2003
in
APPEAL FROM ORDER No.421 of 2002

with
CIVIL APPLICATION No.2527 OF 2003
in
APPEAL FROM ORDER No.421 of 2002

with
CIVIL APPLICATION No.9003 of 2005
in
APPEAL FROM ORDER No.69 of 2003

with
CIVIL APPLICATION No.8739 of 2005
in
APPEAL FROM ORDER No.421 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AJENDRAPRASADJI NARENDRAPRASADJI PANDE AND ANOTHER

Versus

SWAMI KESHAVPRAKASHDASJI NARAYANPRAYDASJI AND OTHERS

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Appearance :

APPEAL FROM ORDER No.421 of 2002 :

FOR THE APPELLANTS

MR S.B. VAKIL, SENIOR COUNSEL with

MR.H.M. PARIKH, ADVOCATE with

MR.Y.N. OZA, SENIOR ADVOCATE WITH MR.SHIVANG SHUKLA with

MR.S.I. NANAVATI, SENIOR ADVOCATE with

MR.A.S. VAKIL, ADVOCATE

MR.HEMANG H. PARIKH, ADVOCATE

MR.RASESH H. PARIKH, ADVOCATE

MR.SHIVANG SHUKLA, ADVOCATE

MR.P.J. VYAS, ADVOCATE

MR.DIVYESH G. NIMAVAT, ADVOCATE

FOR THE OPPONENTS

MR.S.N. SHELAT, ADVOCATE COUNSEL

MR.P.M. RAVAL, SENIOR COUNSEL

MR.PRASHANT DESAI,

MR.MRUGEN PUROHIT

APPEAL FROM ORDER No.69 of 2003

FOR THE APPELLANTS

MR.P.M. THAKKAR, SENIOR COUNSEL

MR.H.P. RAWAL

FOR THE OPPONENTS

MR.P.M. RAVAL, SENIOR COUNSEL with

MR.MRUGEN PUROHIT for respondent no.3.

MR.Y.N. OZA, SENIOR COUNSEL with

MR.H.M.PARIKH with

MR.H.H. PARIKH for respondents no.1 & 2.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 05/10/2005

COMMON ORAL JUDGMENT

1. This Appeal From Order is listed along with the above matters.

2. These matters were listed before this Court on 15.09.2005 and since then, the matters were heard

practically on day to day basis. The matters were last argued on 30.09.2005 by Mr.H.M. Parikh, who was replying to the arguments of the learned advocates appearing for the opponents. The learned advocate concluded his arguments with a request that in case of necessity he will submit rectification/s in 'the list of dates of various litigations' and 'the chart showing position of various litigations' submitted by the opponents. On 03.10.2005 learned advocate did not submit any rectification. On 04.10.2005 learned advocate submitted that as there are no material rectifications the list of dates of various litigations and chart showing position of various litigations along with extracts-Schedule 'A' to 'I' be taken as not controverted.

3. The present litigation has chequered history, which can be seen from the record of the case. The litigation was before the Hon'ble the Apex Court by way of,

(i) Special Leave Petition (C) No.15386 of 2004 which was registered as Civil Appeal No.3380 of 2005 filed against the order passed in Appeal From Order No.421 of 2002 by original defendant no.1.

(ii) Special Leave Petition (C) No.16128 of 2004

which was registered as Civil Appeal No.3381 of 2005 filed against the order passed in Appeal From Order No.421 of 2002 by original defendant no.2

(iii) Special Leave Petition (C) No.17836 of 2004 which was registered as Civil Appeal No.3382 of 2005 filed against the order passed in Appeal From Order No.421 of 2002.

All these matters were disposed of by the Hon'ble the Apex Court by common judgment and order dated 13th May 2005. The Hon'ble the Apex Court without expressing any opinion on the merits and acceptability of various issues, remitted the matters to this Court for fresh consideration. The Hon'ble the Apex Court observed :

> “Since the controversy is continuing unabated it would be in the interest of the parties if the appeals and connected matters are disposed of by the end of September 2005. ... ... We make it clear that as noted above we have not expressed any opinion on the merits and we have interfered primarily on the ground that the impugned order of the High Court has been passed without taking note of the relevant aspects and,

therefore, deserves to be set aside for fresh consideration.”

4. The Hon'ble the Apex Court observed in para 8 as under :

“It is to be noted that the legality of the appointment of Rakeshprasadji as Acharya was questioned. So, as noted above the basic controversy revolves round the question of the legality of the decision taken to remove Ajendraprasadji and the legality of the appointment of Rakeshprasadji.”

The Hon'ble the Apex Court observed in para 10 as under:

“Had both the appeals taken together the stand of the parties would have become clearer before the High Court. Additionally, the High Court does not appear to have dealt with the relevant aspects while affirming the order passed by the trial court.”

5. In view of the aforesaid observations of the Hon'ble the Apex Court all these matters are heard together and decided by this common judgement and order.

6. To start with Appeal From Order No.421 of 2002 is filed by the original defendants in Special Civil Suit No.156 of 2002 filed in the Court of learned 3rd Joint Civil Judge (Senior Division), Nadiad, being aggrieved by the judgement and order dated 01.10.2002 disposing of exh.5 application. The order is to operate till final disposal of the suit.

7. Along with Appeal From order No.421 of 2002, a Civil Application No.7250 of 2002 for stay was filed. The same is disposed of by this Court by judgement and order dated 30.01.2003. This Court did not stay the order passed below Exh.5 dated 01.10.2002. The resultant effect is, the appellant (original defendant no.1) is restrained from appointing and/or nominating any person as Acharya of Vadtal diocese of Swaminarayan sect and also not permitting applicant no.1 to perform duties of Acharya as contemplated under the scheme of Vibhag Lekh.

The order of this Court in Civil Application No.7250 of 2002 dated 30.01.2003 was challenged before the Hon'ble the Apex Court by filing Special Leave Petition (C) No.3351 of 2002, which was disposed of at the hearing itself by order dated 07.07.2003, the relevant part reads as under:

“The restriction imposed in the first part of the order need necessarily to be understood in the light of the other directions further made by granting liberty to perform darshan like any other common man and they only cannot perform darshan or puja in the capacity of Acharya. Hence, having darshan or offering worship like any other devotee-common man has not been, in our view, restrained by the order under challenge. The restriction on the holding meeting also would be in respect of such meeting in the temple campus.

The appeal before the High Court appears to have already been heard by a learned Single Judge for a considerable time and due to intervening summer vacation and change in the sitting roster thereafter it stands now listed before another learned Single Judge. Having regard to the important nature of the issues, the learned Chief Justice, Gujarat High Court, is requested to ensure the hearing and disposal of the appeal as expeditiously as possible either by the same learned Judge, who heard the matter earlier or

by another learned Single Judge before whom it now stands listed.

The special leave petition shall now stand disposed of on the above terms. However, it is made clear that our order should not be taken to have expressed any opinion on the merits of the claims of either parties in any manner either way."

8. The Hon'ble the Apex Court clarified its order by saying that it has not thought it fit to probe into the matter any further in light of the fact that the matter (Appeal From Order) is being heard in the High Court.

In the result the order passed by the learned 3rd Joint Civil Judge, Nadiad below Exh.5 in Special Civil Suit No.156 of 2002 dated 01.10.2002 continue to operate.

9. Appeal From Order No.421 of 2002 along with other matters is argued at length. The main thrust of the arguments of the learned senior counsels for the appellants is that Special Civil Suit No.156 of 2002 before Nadiad Court, by the plaintiffs, is not maintainable on more than one ground. The same are

considered in this judgement hereafter.

The learned counsel arguing for the appellants in Appeal From Order No.69 of 2003 vehemently contended that Special Civil Suit No.17 of 2003 filed in the Court of the learned Civil Judge (Senior Division) at Anand and the order passed therein on an injunction application on 16.02.2003 is an illustration of abuse of process of law. The suit was filed on 16.02.2003, it was Sunday. The interim injunction order was obtained at 8.30 PM that too without observing the mandatory provisions of law in this regard.

10. Taking an overall broad view of the controversy between the parties, Special Civil Suit No.156 of 2002 is filed by one Swami Keshavprasadji and two Hari Bhakts praying for a declaration that in view of Resolution No.4 dated 11.05.2002 passed at 'Salangpur' (a place geographically situated within the limits of district Ahmedabad, having a temple of Lord Hanuman, belonging to Vadtal Gadi of Swaminarayan sect), defendant no.1 does not remain “Acharya” of Vadtal Gadi and therefore, he himself or through defendant no.2 or his supporters is not entitled to enjoy any rights of any nature on the basis of the office of 'Acharya' in any 'Shikharband

Mandir' or 'Hari Mandir' and the registered properties and the trust premises of the temples of Vadtal, Gadhada, Junagadh Pradesh under Vadtal and it be declared that defendant no.1 posses no authority to appoint defendant no.2 as his successor on the 'Vadtal Gadi'.

It is in this suit that the order under challenge dated 01.10.2002 is passed by the learned 3rd Joint Civil Judge (SD), Nadiad.

11. As against this, Special Civil Suit No.17 of 2003 is filed by one Harjabhai Nanjibhai Bhimani and another against newly appointed 'Acharya' and others-defendants praying that:

> “A declaration and permanent injunction be granted that the defendant no.1 is not the Acharya of the Swaminarayan Sampraday of the Southern Diocese and therefore, has no authority or right to carry out act of any nature whatsoever.”

11. Aforesaid two rival litigations which are not the only litigations as there are numerous other litigations

filed in various courts by various parties, which are alleged to be the supporters of each other, are for the present 'main proceedings', and the orders passed in the aforesaid two suits, Appeals From Order are before this Court, which are being heard and decided by this Court.

12. To find out the real cause, giving rise to the present litigations, one will have to go to the history, which is very succinctly put by the learned District Judge, R. Knight, in his judgement and order dated 23rd June 1905 in Original Civil Suit No.22 of 1902, which is as under:

> “In the early part of the nineteenth century a Hindu religious reformer entered Gujarat. The message that he came to deliver embodied no new crood. It strove indeed to rid the ancient faith of its idolatrous accretions and restore it to its primitive monotheism, but the reform at which it chiefly aimed was a reform not of belief but of morals. Himself of a life of religious austerity. Sejanand Swami fiercely denounced the license and immorality prevalent among the priesthood, and in the scheme of doctrine which he eventually promulgated, while

recognising to the full the impossibility of salvation without faith like the Christian St. James he more especially emphasised the no less essential condition of righteousness. Faith without works is dead, was the key note of his mission.

Attracted by the magnetism of his personality, the purity of his life, and the inherent force of his teaching, a numerous following, augmented by his steadfastness under prosecution, gather about him; and though his early efforts, like those of a far greater predecessor were chiefly directed to the reclamation of the lowlier classes, he presently numbered many wealthy persons among his adherents. With their assistance and with that of regular system of contributions that he imposed upon his followers, he built two great temples for the perpetuation of his teaching and the organisation of his sect. The one, situated in Ahmedabad City was dedicated to the God Narnarayan the other, at Wadtal in the Kaira district, to another incarnation of Krishna, Laxminarayan. Dividing the whole of India into

two dioceses, he subordinated each half to one of these temples; and then selecting two of his nephews to succeed him he caused them to draw lots and under this providential guidance placed each in the supreme control of either diocese, which was thenceforward to be administered in accordance with the written constitution which he had devised. This was in 1827. It was not his design that they should await his death before assuming their new responsibilities. Immediately after their selection he installed them upon their respective thrones, and made over to them full control over the affairs of the sect, divesting himself absolutely of all connection with worldly affairs, though as was natural, he continued to benefit the infant organisation by his influence and advice until his death two years later."

13. As the dispute with which this Court is faced with is related to southern diocese-Vadtal Gadi, the details of successive 'Acharyas' of this Gadi are set out:

Sl. No.	Name of Acharya	Period	Remarks
1	Raghuvirji	1826-1863	Adopted by Shri Sahjanand Swamy being his nephew and installed as 'Acharya' of the southern diocese, Vadtal with the consent of the congregation.
2	Bhagvatprasad	1863-1879	--
3	Biharilal Prasad	1879-1899	Adopted by Raghubir Prasad and nominated as 'Acharya'.
4	Laxmiprasad	1899-1909	Adopted by Biharilal Prasad and installed as 'Acharya'.
5	Sripati Prasad	1909-1931	Selected and appointed as Acharya.
6	Anand Prasad	1931-1959	Adopted by Sripati Prasad as 'Acharya'.
7	Narendra Prasad	1959-1984	Son of Anand Prasad, nominated as 'Acharya'. Deposed by Resolution dated 11.05.2002 passed by Sat Sang Mahasabha Sabha.
8	Ajendraprasadji	1984 onwards	Petitioner herein

14. While commenting upon this Chart of “Acharyas of Vadtal Gadi”, both the parties have made rival submissions. The appellants of Appeal From Order No.421 of 2002 submitted that as far as 'Acharya' is concerned he has a right/ authority/ power to nominate his successor. As against that, the appellants of Appeal From Order No.69 of 2003 submitted that for the appointment of an 'Acharya' the consent of the

congregation-referred to as Dharm Sabha or Satsang Mahasabha was a sine qua non. It was submitted that Shri Laxmi Prasadji was deposed (dethroned) by the congregation-Dharm Sabha and appointed/ installed Sripati Prasad as 'Acharya'. According to them it is only the congregation-Dharm Sabha-Satsang Mahasabha, has the power/ authority to depose an Acharya, when in the opinion of the congregation-Dharm Sabha, Sat Sang Mahasabha, the occupant-Acharya is not upto the expectations of the founder, Shri Sahajanand Swamy. These expectations are found in the scriptures like, (i) Desh Vibhag No Lekh, (ii) Shiksha Patri, (iii) Sat Sang Jivan, and (iv) Vachanamrit.

15. Learned counsels appearing for the respective parties stated that they are not addressing themselves either to the grounds or to the reasons for which Resolution dated 11.05.2002 was passed. They decided not to go in to the correctness of those grounds/ reasons. They restricted their submissions only on the point of maintainability of the suit (Special Civil Suit No.156 of 2002 before Nadiad Court).

16. Mr.Vakil, the learned senior counsel submitted that the present suit (Special Civil Suit No.156 of 2002) is

not maintainable on more than one grounds.

He submitted that earlier these very plaintiffs had filed Special Civil Suit No.144 of 2002 in Bhavnagar Court on 28.05.2002. In that suit no injunction was granted at the initial stage, but after biparte hearing injunction was granted. In that suit, the defendants had filed an application to contend that Bhavnagar Court has no jurisdiction, but then that application was dismissed.

Dismissal of the defendants' application was challenged in Civil Revision Application No.650 of 2002. Injunction order dated 01.07.2002 was challenged in Appeal From Order No.284 of 2002. Civil Application No.4612 of 2002 was also filed with Appeal From Order. This Court taking into consideration the nature of the controversy involved in the matter on 11.07.2002 passed the following order:

> “(i) The present appellants should be allowed to enter all the temples under 'Vadtal Desh' (southern diocese) in their individual capacity for performing Darshan and Puja including Arti
>
> (ii) Rest of the order shall not operate on an

assurance given by appellant no.1 who is present before the Court that he will not be organising Dhun or any other proceedings under the same and will not be holding any meeting/ congregation. He will also refrain from addressing such meeting within the premises of any temple of Vadtal Desh (southern diocese).”

Civil Revision Application No.650 of 2002 and Appeal From Order No.284 of 2002 were heard together and were disposed of on 14.08.2002 by the following order:

“Learned advocate Mr.Shah states that since jurisdiction of the court below to entertain the suit in the present nature is questioned, the plaintiffs shall withdraw the suit with a view to presenting the same before appropriate forum.

In view of the statement made by Mr.Shah, neither the appeal nor revision application shall survive. The appeal and revision application are accordingly disposed of. The impugned orders made by the court below applications, Exh.5 & 19 stand vacated. On the plaintiffs making application to that effect the court below shall return the plaint to the

plaintiffs for presentation before appropriate forum. .. .. “

17. The learned senior counsel submitted that the plaintiffs then presented the plaint before the learned Civil Judge (Senior Division), Ahmedabad (Rural) on 04.09.2002. On that very day they withdrew the same. The Purshis filed before the learned Judge is titled as “for returning the plaint”. The application reads as under:

“We, the plaintiffs of the suit pray that in the above matter, through oversight the suit has been filed in this Hon'ble Court. However, in this matter the Hon'ble Court's jurisdiction is of Vadtal be pleased to make an order for returning this matter to us to present the plaint in the court having jurisdiction.”

18. The learned Judge passed the following order:

“In the matter, according to the order of the Hon'ble Court and the facts of the dispute this Court does not find jurisdiction, returns the plaint for presentation to the proper court as demanded.”

Thereafter, the said plaint was presented before the learned 3rd Joint Civil Judge (Senior Division), Nadiad on 06.09.2002 which was registered as Special Civil Suit No.156 of 2002 and on the same day the Court granted an ad interim injunction.

On service of the process and injunction order the defendants appeared before the Court and filed their written statement on 27.09.2002. The matter was heard and haring continued till 30.09.2002. On 30.09.2002, the plaintiffs produced documents which contained 300-400 pages, the plaintiffs also filed written submissions of 23 pages. The learned senior counsel submits that this happened not only in the later part of the day, but at the end of the day, when the arguments had concluded. On the next day, i.e. on 01.10.2002 around 12.30 PM the Court delivered a typed, 45 pages' judgement/ order disposing of exh.5 application finally, confirming the injunction order to last till the disposal of the suit.

19. Learned senior counsel submitted that the Court should take into consideration all these circumstances in totality with a pointed attention to the fact that at Bhavnagar when it was contended that the court has no

jurisdiction, it was opposed and thereafter before this Court it was conceded. This Court while disposing of the Civil Revision Application and Appeal From Order had observed that, “on the plaintiffs making application, the Court below shall return the plaint to the plaintiffs for presentation before the appropriate forum.” The plaint was then filed before the learned Civil Judge (SD), Ahmedabad (Rural) on 04.09.2002. Thereafter, an application/ Purshis was filed misrepresenting that as per the High Court, 'jurisdiction' is at Vadtal. The learned Judge relying on the averments made in the said application ordered that, 'as per the High Court's order and in light of the dispute the Court having no jurisdiction a demand being made for return of the plaint the same is granted”. The learned senior counsel submitted that on this ground alone the suit be held not maintainable.

20. The learned senior counsel submitted that certain submissions were made at the time of earlier hearing of this Appeal From order, which were also placed before the Hon'ble the Apex Court by way of an affidavit in these very proceedings, therefore, he be permitted to submit the same. Other side objected to these submission saying that the same do not form part of the record. It was

argued that if the learned senior counsel wants to raise those submissions let an application seeking permission be filed. The learned advocate for the appellants filed Civil Application No.8739 of 2005 in Appeal From order No.421 of 2005 seeking permission to produce the 'affidavit in rejoinder' dated 18.10.2004, filed before the Hon'ble the Apex Court.

Mr.Vakil, the learned senior counsel submitted that the present hearing is a 're-hearing' of exh.5 after the matter is remitted to this Court by the Hon'ble the Apex Court and therefore, the affidavit in rejoinder can be taken into consideration by this Court.

In this Civil Application in light of the submission made in detail by both the sides which are taken into consideration an order is passed at the appropriate stage.

21. The learned senior counsel next submitted that as a condition precedent, plaintiffs must have a prima facie case in their favour to get an order. Explaining this, he submitted that the plaintiffs should have a relatively 'better case' than the defendants. Meaning thereby there should be more likelihood of success of the plaintiffs

than that of the defendants. He submitted that according to him this requirement is not fulfilled and therefore, the learned trial judge ought not to have granted an order of injunction. In support of his submissions he relied upon the following decision of the Hon'ble the Apex Court:

(i) Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., reported in (1999) 7 SCC 1 (Paras 7, 16 & 24)

(ii) S.M. Dyechem Ltd. Vs. Cadbury (India) Ltd., reported in (2000) 5 SCC 573 (Paras 19, 20 & 21)

(iii) Cadila Health Care Ltd. Vs. Cadila Pharmaceuticals Ltd., reported in A.I.R. 2001 SC 1952 : (2001) 5 SCC 73

(iv) Gujarat Bottling Co. Ltd. & others Vs. Coca Cola Co. & others, reported in (1995) 5 SCC 545 (Para 43)

(v) Gagandeep Pratishthan Pvt. Ltd. And others, Vs. Mechano and another, reported in (2002) 1 SCC 475.

(vi) National Highways Authority of India Vs. Ganga Enterprises & another, reported in (2003) 7 SCC 410.

(vii) Rajasthan Social Welfare Advisory Board and

another Vs. Ram Kishore Meena and others, reported in (2004) 10 SCC 84

(viii) Ashok Kumar Jain Vs. Neetu Kathoria and others, reported in (2004) 12 SCC 73.

Last but not the least a decision of this Court in the matter between **State of Gujarat vs. Mangal Traders**, reported in 1987 1 GLH 493 was also relied upon.

The learned senior counsel submitted that all these decisions with some variation of expression lay down that, 'when there is no 'prima facie' case, no 'balance of convenience' no likelihood of an 'irreparable loss' being suffered by the party, the Court should not grant an order of injunction in favour of such party. He submitted that in addition to the aforesaid factors, there is an equally important factor and that is 'maintainability' of the suit. He submitted that if a suit is not maintainable, then there is no question of granting any interim order. To support his submission the learned senior counsel relied upon the observations made in the case of State of Gujarat Vs. Mangal Traders (supra) in para 15, which are as under:

"On the question of *prima facie* case, of the

opponents-plaintiffs, the fundamental question that arises is whether the Civil Court has jurisdiction to entertain such suits and grant any relief. If there is no jurisdiction, the plaintiffs are bound to fail in the suit and then there is no *prima facie* case for the plaintiffs to succeed in the suit. Mr.Shah submitted that if this issue is finally decided at this stage in the revision application arising out of the interlocutory order, the whole suit is likely to fail and, therefore, the proper procedure would be to direct the trial court to hear and decide the issue regarding jurisdiction as a preliminary issue and not to decide that question in this revision application. Such plea may sometimes be upheld in the facts and circumstances of a given case. But there cannot be such general practice to be followed in every case. While granting the injunction, the plaintiffs have to make out a *prima facie* case on all material issues in the suit in order to show that they are likely to succeed in the suit. On the other hand, the defendant is entitled to show that the plaintiffs are not likely to succeed in the suit and, therefore, the interim injunction shall be refused. Therefore, while deciding the injunction application and the revision arising from such application, the Court has to consider even *prima facie* case as to whether the plaintiffs are likely to succeed or likely to fail in the suit."

The learned senior counsel elaborating his argument of 'maintainability of a suit' submitted that the same is the resultant effect of several factors like limitation, territorial jurisdiction, etc. He submitted that if the suit is not maintainable on any ground the same must have an inevitable result of failure of the plaintiffs, and that being so its consequential effect is 'no injunction' in favour of the plaintiffs.

22. The learned senior counsel next submitted that the present suit is barred by section 80 read with sections 50(g) & (h) and sec.52 of the Bombay Public Trusts Act, 1950. The learned senior counsel submitted that there is a scheme framed by this Court in First Appeal No.543 of 1970, confirmed in Letters Patent Appeal No.183 of 1973 on 04.02.1976, which governs the affairs of the trust of Shri Laxminarayan Dev at Vadtal and the temples subordinate to it. He vehemently submitted that once there is a scheme in operation the plaintiffs ought to have resorted to the remedy available under the scheme. He submitted that clause 47 of Chapter XIV of the scheme entitled “Miscellaneous”, reads as under:

> “Any two members of the Board, the Acharya or any, two Satsangis, two Tyagis or the Charity

> Commissioner shall be entitled to apply to the High Court of Gujarat for directions and/ or modification, alteration or verification (sic., variation) of the scheme."

23. The learned counsel submitted that even Resolution dated 11.05.2002, on which the entire suit is based (Special Civil Suit No.156 of 2002) also refers to the failure of 'Acharyashri' in discharge of the duties which he is under an obligation to discharge under the scheme. The learned senior counsel submitted that the alleged removal (dethronement) of Acharyashri by the so called Satsang Mahasabha, according to him was without any authority. He submitted that this submission should not be treated so as to have recognised the existence of Satsang Mahasabha on the part of the Acharyashri. He submitted that as per the Scheme framed by the High Court of Gujarat, the plaintiffs ought to have resorted to the remedy provided under clause 47 of the Scheme.

24. The learned senior counsel next submitted that my client does not admit that Satsang Mahasabha had or has any right or authority to depose/ remove an Acharya. But still it is required to be noted that the 'Satsang Mahasabha' had come into existence only after a meeting

of leading sant of Southern Diocese, which consists of Vadtal, Ghadpar (popularly known as “Gadhada”), Junagadh and Dholera on 14.05.2001. This meeting was called by a notice under the signature of the Chairman, 'Vadtal Temple, Managing Trustee Board' and the Joint Secretary and Chief Executive Kotharishi, Sansthan-Vadtal. He submitted that in the said meeting, only 81 Sants from Vadtal, 41 from Gadhada and 81 from Juangadh had remained present. In the said meeting a Resolution was passed condemning certain acts of Acharyashree stating that he is not befitting to be an Acharya. A Resolution was also passed conveying thanks to 'Acharya Shri Tejendraprasadji Maharaj' of Northern Diocese for giving diksha to parsads of southern diocese. The learned senior counsel submitted that Resolution No.3 passed in the said meeting is required to be given a special attention for the reason that by the said Resolution, “Tyagi Panch” is constituted after recording that earlier under Southern Diocese at places like Vadtal, Gadhada, Junagadh and Dholera there were such Panchas and they were regulating the conduct of 'Sant' in public, such Panchas used to take decision in the matter of an improper act of a Sant, such decision used to be acceptable to all, not only that the same used to be accepted, approved and implemented by the

administrators of the institution as well as Acharyashree. The Resolution proceeds to record that for a long and after the new schemes came into being there was no existence of Panch, but now a “Tyagi Panch” is constituted afresh. It is provided in the Resolution that a 'Panch' must hold a meeting at least once a year. The headquarter of the 'Panch' will be at Vadtal. The decision of the Panch will be considered to be 'for the benefit of Tyagi'. The decision of the Panch will have to be implemented by Acharyashree and the Board, accepting the same to be for the benefit of Tyagi. The decision of the Panch regarding 'public conduct' of Tyagi will have to be strictly followed by Tyagi-Sant.

25. The learned senior counsel submitted that important aspect of this meeting is that in this meeting out of approximately 500 Sadhus/ Tyagis/ Sants of Vadtal only 81 remained present; out of approximately 250 Sadhus of Gadhada only 41 remained present; out of approximately 300 Sadhus of Junagadh only 31 remained present. He submitted that thus, not even a simple majority of the total strength of Sadhus was present in the meeting. He submitted that even at the cost of repetition he reiterates that his client does not recognise Satsang Mehasabha and asserts that the same has no authority to

depose/ remove an Acharya.

26. The learned senior counsel submitted that in a similar manner meetings were convened at 'Dabhan' and 'Chharodi' on 27.09.2001 and 17.10.2001 respectively before convening the meeting at 'Salangpur' on 11.05.2002 in which the Resolution on which the plaintiffs have based their suit was passed.

The learned senior counsel submitted that the meeting of Tyagis and leading Haribhakt at 'Salangpur' is given the nomenclature of 'Satsang Mahasabha'. He submitted that it is mentioned in the Resolution dated 11.05.2002 itself that the said 'Satsang Mahasabha' was constituted of only 125 Sants and 411 Satsangis, whose names were recorded in different registers on the basis of their place of residence. He submitted that it is this small group of Sants and Satsangis titled themselves as 'Satsang Mahasabha' and passed a Resolution, basing on which the plaintiffs filed Special Civil Suit No.156 of 2002 and obtained an injunction against defendant no.1-Acharya.

The learned senior counsel next submitted that in light of the fact that there is an 'existing scheme' which lays

down the 'duties' and 'powers' of an Acharya, a suit is not maintainable. The learned sr. counsel referred to clause 47 of the Scheme and sections 50, 51 & 80 of the Bombay Public Trusts Act. In support of his submission he relied upon a decision of the Bombay High Court in the matter of **Sakharam Daji Ganpule and others Vs. Ganu Raghu Gurao and others,** reported in A.I.R. 1921 Bombay 297. He submitted that the learned trial Judge ought to have entertained the suit holding that the same is barred under the relevant provisions of the Bombay Public Trusts Act. The learned senior counsel submitted that while deciding the question of maintainability of the suit, the form of the suit is not a decisive factor. He submitted that according to him what is important is the 'substance' of the suit and on the basis of the substance alone the court has to decide whether a suit is maintainable or not. The learned senior counsel submitted that the allegations made in the plaint and the relief/s sought for are required to be taken into consideration. He submitted that in the plaint, 'scheme' is not only referred to but it is referred to very frequently. It is stated in the plaint that Shri Laxminarayan Dev Temple Trust is governed by the scheme (supra). It is mentioned in the plaint that defendant no.1 was appointed as 'Acharya' of 'Vadtal

Gadi' under the practice and the scheme in the year 1984, that Acharya is not discharging his duties cast under Shiksha Patri and the scheme, that defendant no.1 is likely to appoint defendant no.2 as 'Acharya' of 'Vadtal Gadi' at any time and therefore, in the interest of 'Sampraday' and the scheme framed by the High Court of Gujarat, the suit is required to be filed. Learned senior counsel submitted that from the contents of the plaint, it is cellar that in substance the plaintiffs are placing heavy reliance on the scheme (supra). That being so the suit ought to have been held to be not maintainable being barred under the relevant provisions of the Bombay Public Trusts Act. The learned senior counsel emphatically submitted that a 'scheme' can be varied or set aside only on an application to the Court which framed the scheme. He submitted that a suit of the present nature in Regular Civil Court is not maintainable. In support of his submission he relied upon a decision of Allahabad High Court in the matter of **Baba Suraj Gir and others Vs. B. Bramh Narain Advocate & others**, reported in A.I.R. (33) 1946 Allahabad 148.

He submitted that the Allahabad High Court had held that 'the substance of the claim' made in the suit to be looked into, for answering the question as to whether the

suit is for varying or setting aside the scheme.

27. The learned senior advocate next submitted that 'clause 47', which provides for any two members of the Board, Acharya or any two Satsangis/ Tyagis or Charity Commissioner to be entitled to apply to the High Court for a direction and/ or modification, alteration or variation of the scheme, is nothing but an incorporation of provisions of section 50 of the Bombay Public Trusts Act in the scheme. He submitted that clause (g) of sub sec.(iii) of sec.50 of the Bombay Public Trusts Act provides in substance that in any case, to obtain a decree for any of the reliefs for settlement of a scheme or variation or alteration in the scheme already settled, a suit is to be filed under the Bombay Public Trusts Act. The learned senior advocate in support of his submission relied upon the observations made by the Hon'ble the Apex Court in para 13 of the judgment in the matter of **Shree Gollaleshwar Dev and others Vs. Gangawwa Kom Shantayya Math and others**, reported in A.I.R. 1986 SC 231.

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28. The learned counsel also relied upon a decision of

the Privy Council in the matter of **Satish Chandra Gir Vs. Dharnidhar Singh Singha Roy and others**, reported in A.I.R. 1940 PC 24.

The learned senior counsel submitted that when 'secular' and 'religious' functions of 'Mahant', in this case 'Acharya' are are intermingled and inter-dependent and are performed through out the long history of endowment by the same individual, the Court, in a fit case will have power to remove the individual if the Court thinks that the obligations of the office in connection with the endowment can no longer be faithfully discharged without danger to the endowment, treating the same to be a sufficient ground for his removal. The learned Senior Counsel submitted that in the present case it is clear from the religious scriptures particularly, 'Des Vibhag No Lekh' and 'Shiksha Patri' and the 'scheme' (supra) that duties of 'Acharya' are of two types. 'Acharya' is supposed to act as custodian trustee (the term coined for the first time in the scheme (supra) and discharge secular/ temporal duties, besides religious duties. He submitted that according to him these duties are so intermingled that by the impugned Resolution dated 01.05.2002 'Acharya' could not have been deposed for non performing religious duties, without approaching the High

Court.

The learned senior counsel submitted that the judgement of the Privy Council in the matter of Santoshgiri (supra) was followed by Nagpur High Court in a case of **Laxmanrao Umajirao Vs. Govindrao Madhaorao and others,** reported in A.I.R. (37) 1950 Nagpur 215. Learned counsel submitted that earlier section 92 of the Code of Civil Procedure, 1908 provided what is provided by section 50 of the Bombay Public Trusts Act today. The learned senior counsel submitted that there the Court was considering as to whether the Court can remove the head of the Trust. He submitted that it is held that the civil court has jurisdiction in a suit under section 92 to remove head of a public religious and charitable trust from his spiritual as well as secular offices, in the event the Court finds that the functionary in the exercise of his duties has put himself in a position in which the Court thinks that the obligations of his functions in connection with the endowment can no longer be faithfully be discharged without danger to the endowment. The learned advocate also relied upon a decision of the Hon'ble the Apex Court in the matter of **Kanbi Manji Abji and others Vs. Kanbi Vaghji Mavji & others**, reported in A.I.R. 1993 SC 1163. The learned counsel submitted that

even at the cost of repetition he will reiterate that the present suit-Special Civil Suit No.156 of 2002 (Nadiad), in pith and substance is filed seeking so many alterations in the scheme (supra). Therefore, the suit is barred under section 80 and other relevant sections of the Bombay Public Trusts Act.

29. The learned senior counsel next submitted that besides the present suit is also barred under Rule I, Order 23 of the Code of Civil Procedure, because Special Civil Suit No.190 of 2002 instituted in the Court of the learned Civil Judge (SD), Ahmedabad (Rural) on 04.09.2002 after the plaint of Bhavnagar suit was returned to them was withdrawn on the same day, i.e. 04.09.2002, without any specific permission of the Court for filing the same before the appropriate forum. The learned senior counsel submitted that as submitted earlier the plaintiffs had misrepresented before the Court of learned Civil Judge (SD), Ahmedabad about the order passed by this Court on 14.08.2002 in Appeal From Order No.284 of 2002, and Civil Revision Application No.650 of 2002. The learned senior counsel submitted that if the application/ Purshis filed before the Civil Judge (SD), Ahmedabad (Rural) in Special Civil Suit No.190 of 2002 is perused it will be found that though

the same is titled as, “for returning the plaint”, in substance it is for 'withdrawal of the suit'. He submitted that, that being so if the suit is once withdrawn without explicit permission of the Court, no fresh suit can be filed on the same subject matter and hence Nadiad suit is barred.

The learned senior counsel submitted that under Order VII, Rule 11 of the Code of Civil Procedure, the plaint is liable to be rejected in the cases mentioned therein. The learned sr. counsel submitted that clause (a) of Rule 11 of Order VII, provides that, 'the plaint shall be rejected where it does not disclose a cause of action', and clause (d) provides that 'a plaint shall be rejected where the suit appears from the statement in the plait to be barred by any law. In this regard the learned counsel relied upon a decision of the Hon'ble the Apex Court in the matter of **I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and others,** in (1998) 2 SCC 70. The learned senior counsel submitted that the Court is entitled to reject the plaint under Order VII, Rule 11 of the Code at any stage of the suit, that is even after the issues are framed or even at the stage when matter is posted for evidence. The learned senior counsel submitted that in the present case, the plaintiffs have pleaded an

'illusory cause of action', and therefore, the plaint is liable to be rejected under clause (a), of Rule 11 of Order VII.

30. The learned senior counsel next submitted that the plaintiffs have indulged in window shopping. They first filed a suit at Bhavnagar, when it was contended that Bhavnagar court has no jurisdiction, it was contested but then before this court, the learned counsel appearing for the original plaintiffs conceded and a statement was made that they will seek return of the plaint, the plaint was obtained and then the same was filed in the Court of the learned Civil Judge (SD), Ahmedabad (Rural). The learned senior counsel submitted that as stated earlier this suit was 'withdrawn', camouflaging the same to be 'return of plaint'. The same pliant is filed at Nadiad. He submitted that the conduct of the plaintiffs in totality is nothing short of 'abuse of process of law'. The learned senior counsel submitted that when the act of the plaintiffs does not fall with any specific provision of law, it is the duty of the court to act under its inherent powers under sec.151.

In this regard the learned senior counsel relied upon a decision of this Court in the matter of **Bai Virkor, d/o**

Mulsing Ramsing Vs. Prajapati Damodar Boghabhai reported in 1979 (2) GLR 652. The learned counsel submitted that as was held in that case when the second suit is not found to be barred under any specific provision like Order II, Rule 2; Order IX, Rule 9; Order XLIII, Rule 1; section 11; Order XXIII, Rule 1; or last but not the least section 10, the Court has to exercise its inherent powers under section 151. The learned counsel heavily relied upon para 22 of the decision which reads as under:

> "22. A resume of the aforesaid decisions leaves no room for doubt that the court has inherent jurisdiction in suitable cases to set its foot down on smart practices which may be followed by any party before it and in such cases such parties do not deserve any relief from the court and the Court is entitled to strike off the proceedings of such parties and treat the proceedings at the instance of such parties to be not maintainable as amounting to clear abuse of the process of the Court."

31. The learned counsel next relied upon the decision of this Court in the matter of **Dahyabhai Ranabhai Vaghela**

Vs. Bloom Dekor and others, reported in 1995 (1) GLH 865. The learned counsel submitted that when successive suits, for similar reliefs with similar set of pleadings, against the same defendants are instituted to obtain and continue an ex parte interim injunction, the devise adopted is clear abuse of process of law. He submitted that even when there is no express prohibition in the Code of Civil Procedure, 1908 for filing successive suits, if the purpose is to obtain ex parte injunction against the defendants, such device lacks bona fide and the plaintiffs in such suit/s shall have to be subjected to serious action both for contempt of the court and for abuse of process of the court. The learned counsel relied upon the observations made by the learned Judge in para 20 of the judgement. He strongly submitted that the present is also a case of abuse of process of the court which is clear from the facts narrated hereinabove.

32. The learned senior counsel in support of his argument of 'window shopping' and the abuse of process of the court', wanted to refer to some part of the affidavit in rejoinder filed before the Hon'ble the Apex court in Special Leave Petition (C) No.16128 of 2003 (Civil Appeal No.3381 of 2005). The other side objected to that. The learned senior counsel submitted that the

appellants have moved a Civil Application being Civil Application No.8739 of 2005 praying that,

> “to allow the applicants to produce before this Court in the appeal, the said affidavit in rejoinder dated 18.10.2004 of the second applicant.”

The learned senior counsel submitted that the present Appeal From Order is remitted to this Court, by the Hon'ble the Apex Court for re-hearing. He submitted that this appeal is virtually re-hearing of exh.5 application. He submitted that it is a well settled position of law that an appeal is continuation of the suit and that being so subsequent material can also be looked into by the appellate court. In support of his submission he relied upon a decision of the Hon'ble the Apex Court in the matter of **Ramankutty Guptan Vs. Avara,** reported in A.I.R. 1994 SC 1699. The learned counsel submitted that the Hon'ble the Apex Court has held in this case that an application for rescission of contract or extension of time to make payment is maintainable in appellate court as appeal is the continuation of suit. The learned counsel also relied upon another decision of the Hon'ble the Apex Court in the matter of **Dilip Vs. Mohd. Azizul Haw and another** reported in (2000) 3 SCC 607. The

learned counsel submitted that when an appeal is filed against a decree, it is continuation and re-hearing of the suit and therefore, the appellate court is entitled to take into account even the factors and events which came into existence after passing of the decree appealed against.

33. The learned counsel also relied upon a decision of the Allahabad High Court in the matter of **Shri Ram Singh and another Vs. Special Judge, E.C. Act, Additional District Judge, Ballia and others**, reported in A.I.R. 1993 Allahabad 236. He submitted that all powers of the appellate court, unless statute restricts are the same. It is open to the appellate court as is open to the original authority of the Court from whose decision the appeal is preferred. He further submitted that the appellate court has no fetters on it to decide all questions of law and fact which crop up in the case. He submitted that the Allahabad High Court was pleased to hold that in an appeal under Order XLIII, Rule 1 of the Code of Civil Procedure against the order under Order XXXIX, Rule 1 of the Code the powers of the appellate court are as wide as that the trial court. He submitted that if the appellate court chooses, after recording finding that the order under appeal was not a speaking

one, can record a categorical finding on each of the factors governing grant of interim injunction before rejecting the application in toto.

34. It was agreed between the 1parties that this Civil Application be taken up for consideration along with the Appeal From Order. Accordingly, it is taken up for consideration and decided at this stage.

35. This Civil Application filed by the appellants praying that additional evidence be looked into, is replied by Mr.S.N. Shelat, the learned senior counsel. He submitted that an Appeal From Order is filed under Order XLIII of the Code of Civil Procedure. He submitted that under Rule 1 orders against which an appeal shall lie are enumerated. Whereas Rule 2 provides the procedure. Rule 2 reads as under:

> "2. Procedure – The rules or Order XLI shall apply, so far as may be, to appeals from orders." (emphasis supplied)

36. The learned advocate submitted that the words, 'so far as may be' are of special significance and the Legislature has used this phrase with a definite

purpose. He submitted that the purpose is that 'Rules of Order XLI are to be applied but not in 'toto'. Rules under XLI are to be applied **'as far as applicable'.** The learned senior advocate invited attention of the Court to Rule 27 of Order XLI, which deals with production of additional evidence in appellate court. He submitted that it is not inappropriate to remind ourselves that Order XLI deals with 'appeal' from 'original decree'. Meaning thereby, the suit is finally heard and has culminated into a decree. He submitted that in those cases the question of production of additional evidence in appellate court is governed by Rule 27. But then the said Rule 27 is not to be applied **verbatim** to the matters (appeals) under Order XLIII because while prescribing the procedure, by Rule 2 of Order XLIII of the Code, it is said that Rules of Order XLI shall apply '**so far as may be**'. In this regard the learned senior advocate relied upon the decision of the Hon'ble the Apex Court in the matter of **Maktool Singh Vs. State of Punjab** reported in A.I.R. 1999 SC 1131. He submitted that the Hon'ble the Apex Court had an occasion to construe the phrase 'so far as may be applicable' in the said judgement. He relied upon para 5 of the judgement which reads as under:

"5. The argument advanced before us is that when section 36B of the Act preserved the powers of the High Court under Chapter XXIX of the Code while dealing with an appeal challenging conviction under the Act, it must be deemed to have preserved all the powers mentioned in section 389 of the Code including the power to suspend the sentence. But we cannot give accord to that argument on the following grounds. When section 36B of the Act is juxtaposed with section 32A the latter must dominate over the former mainly for two reasons. First is that section 32A overrides all the provisions of the Code, by specific terms, through the non obstante limb incorporated therein. Second is that section 36B has clearly indicated that its applicability is subject to the extent of adaptability because of the words employed therein "so far as may be applicable". This means, the High Court can exercise powers under Chapter XXIX of the Code only to the extent such powers are applicable. In other words, if there is an interdict against applicability of any provision, the High Court cannot use such provision, albeit its inclusion

> in Chapter XXIX of the Code. That is the effect of employment of the words "so far as may be applicable" when a statute incorporates provision of another statute."

37. In view of the submissions of both the learned senior advocates on the point, this Court is of the opinion that Civil Application No.8739 of 2005 must fail. The affidavit in rejoinder along with the documents filed in SLP (C) No.16128 of 2004, i.e. Civil Appeal No.3381 of 2005 cannot be looked into for deciding Appeal From Order No.421 of 2002 or Appeal From Order No.69 of 2003. In both these appeals the Court is to examine the legality and validity of the order under challenge. That being so the Court must take into consideration only that material which was produced before the learned Judge, relying on which he passed the order. If any of the party wants to rely upon any additional material which was not before the learned Judge then that cannot be taken into consideration for deciding the legality of the order. This is warranted to do justice to the learned Judge. For the present as this court was to consider the legality and validity of the order passed by the learned Judge below Exhibits 5 and 19 dated 01.10.2002, this additional material is not

taken into consideration. It is settled legal position that the legality of the order should be examined only on the basis of the material which was placed before the learned Judge. Taking into consideration anything which was not before the learned Judge and then deciding the legality and validity of the order will be doing injustice to the learned Judge. In the matters which are finally decided permitting the production of additional material at appellate stage is one thing because by doing so parties are saved from being sent to the court below. But then in the cases like on hand where the parties are very much before the learned Judge for trial must be asked to produce the additional material before the Judge concerned, of course, subject to the compliance of the provisions of law on the subject. Once that is done, the learned Judge is to take the same into consideration for deciding the issue finally. Accordingly, Civil Application No.8739 of 2005 is dismissed. Rule is discharged with no order as to costs.

However, it is clarified that dismissal of this Civil Application does not mean that this material cannot be pressed into service by the appellant for getting the issue decided finally by the trial court.

The learned senior counsel for the appellant next submitted that the plaintiffs have relied upon the impugned Resolution dated 11.05.2002 passed by the so called Satsang Mahasabha. He submitted that there is no such 'body' known as, “Satsang Mahasabha”. He submitted that assuming without admitting that there is such a body like 'Satsang Mahasabha' then the Court is required to consider whether 'Satsang Mahasabha' has any power to depose Acharya.

He submitted that this is clear from the religious scriptures of 'Swaminarayan Sampradaya' like Des 'Vibhag No Lekh', the 'sanctity' of these scriptures is beyond doubt, this 'Lekh' was prepared under the directions of Shri Sahjanand Swamy during his life time. He submitted that reading, re-reading and re-reading of not only the 'Lekh' but any of these scriptures do not indicate that any power is conferred on any 'body' like 'Satsang Mahasabha' to depose an 'Acharya'. To substantiate his submission he invited attention of the Court not only to the scriptures but also to the judgement of the learned District Judge, R. Knight in Original Civil Suit No.22 of 1902 dated 23rd June 1905; the judgement of learned Civil Judge, Gonda in Regular Civil Suit No.30 of 1947 dated

14.09.1948; the judgement of Allahabad High Court (Lucknow Bench) in First Appeal No.57 of 1949 which was pronounced on 20.12.1961 and reasons were to follow, on 22.01.1962. The learned senior counsel submitted that none of these documents refer to a 'body' like 'Satsang Mahasabha'. Besides, he submitted that as there is no permanent existence of any such 'body' like 'Satsang Mahasabha' there are no rules prescribing the constitution of the same. He submitted that the impugned Resolution was passed by the so called 'Satsang Mahasabha' in a meeting held at Salangpur on 11.05.2002. But then it is not on record as to whether the said meeting was convened by issuing a public notice to Sant/ Sadhu/ Tyagi, Parshad and Haribhakt/ Satsangi of Southern Diocese. The learned senior counsel submitted that even 'Vadtal Temple Trust Board' has not passed any Resolution deposing the 'Acharya'. It has also not approved the so called Resolution dated 11.05.2002 of the so called 'Satsang Mahasabha' whereby the 'Acharya' is stated to have been deposed/ dethroned. He submitted that even at the cost of repetition he reiterates that the so called 'Satsang Mahasabha' was attended by a very small number of Sant/ Sadhu/ Tyagi and same was the case with Haribhakt/ Satsangi.

Learned senior counsel submitted that according to him there is no instance of deposition/ removal of an Acharya during the long past, after the inception of “Acharyaship”. He submitted that even the so called deposition/ removal of Shri Laxmiprasadji was not the deposition/ removal by the so called 'Satsang Mahasabha'. He submitted that if the details of the case are perused, one will find that it was a case of 'abdication of the post of Acharya'. Shri Laxmiprasadji had executed an agreement and by that he had abdicated the Office of Acharya. In return it was agreed that his outstanding dues will be paid off, he will have 'limited interest' in 14 villages, besides he was paid Rs.83,000/- in cash for making provision for his future needs.

38. The learned senior counsel submitted that assuming for the sake of argument that there is a body like Satsang Mahasabha and it has power to depose Acharya, then also decision dated 11.05.2002 is vitiated on account of violation of principles of natural justice, as the present appellant-Acharya Ajendraprasadji was never given an opportunity to present his case before the so called 'Satsang Mahasabha'.

The learned senior counsel very vehemently contended

that the order passed by the learned Judge of Ahmedabad Court was on a misrepresentation and that being so, the same is vitiated by fraud. To substantiate his submission, he invited the attention of the Court to the order passed by this Court in Appeal From Order No.284 of 2002 and Civil Revision Application No.650 of 2002, which reads as under:

> "Learned advocate Mr.Shah states that since jurisdiction of the court below to entertain the suit in the present nature is question, the plaintiff shall withdraw the suit with a view to presenting the same before appropriate forum.
>
> In view of the statement made by Mr.Shah neither the appeal nor revision application shall survive. The appeal and revision application are accordingly disposed of. The impugned orders made by the courts below, applications, exhibits 5 &19 stand vacated. **On the plaintiffs making application to that effect the court below shall return the plaint to the plaintiffs for presentation before appropriate forum.** ... ..." (emphasis supplied)

39. The learned senior counsel submitted that the

Purshis filed before the learned Civil Judge (Senior Division), Ahmedabad (Rural) in Special Civil Suit No.190 of 2002 was titled as 'for return of the plaint”. The learned senior counsel emphatically submitted that in the said application it was stated that, 'through oversight the suit has been filed in Ahmedabad Court. However, in this matter as per the Hon'ble High Court, jurisdiction is of Vadtal. Be pleased to make an order for returning this matter to us to present the plaint in the court having jurisdiction.” (emphasis supplied)

The learned senior counsel submitted that this misrepresentation worked and the learned Judge relying on the contents of the application/ Purshis, passed an order as under:

> “In the matter **according to the order of the Hon'ble High Court** and the facts of the dispute this court does not find jurisdiction, returns the plaint for presentation to the proper court as demanded.”

The learned senior counsel submitted that the plaintiffs must fail on account of fraud and also on account of abuse of process of court. He submitted that once the

Court finds that there is abuse of process of court, the court must invoke its inherent jurisdiction and put its foot down. In support of his submissions the learned senior counsel relied upon the following decisions of the Hon'ble the Apex Court:

(i) (2003) 8 SCC 311

(ii) (1996) 5 SCC 556

(iii) (1994) 1 SCC 1,

40. The learned senior counsel submitted that though in the present Appeal From Order, the appellants have not challenged the order passed below Exh.19 – an application filed by the appellants under Rule 11 of Order VII of the Code of Civil Procedure, praying for rejection of the plaint, it should be considered to have been challenged as the Order below Exh.5 and 19 is a common Order. The learned senior counsel submitted that even the Hon'ble the Apex Court in its judgment and order dated 13.05.2005, by which the matter is remitted to this Court, in paragraph No.6 has observed as under:

> “.. .. Though the present appellant's application in terms of Order 7, Rule 11 CPC was rejected that cannot and has not been taken

as a ground to grant injunction. **As the order was a combined one, the appeal can be said to be against the order rejecting the application** in terms of Order 7, Rule 11 CPC. .. ..”

41. The learned senior counsel also submitted that the term 'decree' is defined in subsec.(2) of sec.2 of the Code. According to that, it is only a formal expression of adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. He submitted that it is further provided therein that, “**It shall be deemed to include the rejection of a plaint** and the determination of any question within section 144, but shall not include ..”

42. The learned senior counsel submitted that as was held by the Hon'ble the Apex Court in the matter of **Reliable Water Services India Pvt. Ltd. Vs. Union of India & ors.**,reported in A.I.R. 1971 SC 2083, this part of the appeal can be converted into revision application.

The learned senior counsel further submitted that 'the order refusing to reject the plaint' is though an

interlocutory order, the same can be challenged and there will be no bar of res judicata. In support of his submission the learned senior counsel relied upon a decision of the Hon'ble the Apex Court in the matter of **Satyadhan Ghosal and others Vs. Smt.Deorajin debi and another**, reported in A.I.R. 1960 SC 941, and in the matter of **Amar Chand Butail Vs. Union of India**, reported in A.I.R. 1964 SC 1658.

43. The learned senior counsel submitted that as contended earlier the learned Judge ought to have rejected the plaint holding that the plaint does not disclose cause of action. He reiterated that in light of the provisions of Order XXIII, Rule 1 of the Code, the trial court ought to have rejected the plaint. The learned senior counsel vehemently submitted that the suit which is bound to be dismissed being barred by law, should have been rejected at the threshold. He sought support to his submission from the decision of the Hon'ble the Apex Court in the matter of **Pearlite Liners (P) Ltd. Vs. Manorama Sirsi** reported in (2004) 3 SCC 172. He submitted that the Hon'ble the Apex Court has held that, “The answer to the question whether such a suit should be allowed to continue and go for trial is clear, i.e. such suit should be thrown out at the

threshold. Why should a suit which is bound to be dismissed for want of jurisdiction of a court to grant reliefs prayed be tried at all? .. “

44. The learned senior counsel also placed reliance on a decision of the Hon'ble the Apex Court in the matter of **Sopan Sukhdeve Saba Vs. Assistant Commissioner,** reported in (2004) 3 SCC 137. The learned counsel submitted that as submitted earlier, in view of the provisions of sections 50, 51, & 80 of the Bombay Public Trusts Act the Court had no jurisdiction and therefore, the plaint was required to be rejected under Order VII, Rule 11. The learned counsel also submitted that once the High Court comes to the conclusion that the jurisdiction of the civil court is barred, the matter cannot be proceeded on merits. The learned counsel submitted that it is not open to the High Court to proceed to consider the merits of the matter after having held that the suit is barred under law.

45. The learned senior counsel strenuously submitted that appointment of Shri Rakeshprasadji be quashed. He submitted that it was only after Civil Application No.7250 of 2002 in Appeal From Order No.421 of 2002 was decided by this Court (Coram : R.P. Dholakia, J.),

refusing to stay the order under challenge dated 01.10.2002, though Appeal From Order was admitted and a direction to place the same before appropriate court for final hearing at the request of the learned counsel, in the first week of February 2003.

After the said order was pronounced a request was made on behalf of the appellants to extend the oral statement made at the Bar by the learned senior counsel for respondents no.1 & 2, but the same was not extended stating that respondents no.1 & 2 are not present in the Court. The learned counsel for the appellants then requested to list the Appeal From Order before the concerned court on the next day, i.e. 31.03.2003. The Court ordered that after obtaining appropriate orders from the Hon'ble the Chief Justice the matter be placed before appropriate court. The appellants then filed Civil Application No.611 of 2003 in Appeal From Order No.421 of 2002, praying that,

> “(A) to restrain pending the hearing and final disposal of the Appeal the opponents from appointing or causing to be appointed any Acharya in the alleged vacancy said to have been created by the deposement of the applicant no.1.

(B) to stay pending the hearing and final disposal of the Appeal operation, implementation or execution of appointment if any made of the new Acharya or any further operation, implementation or execution of appointment."

This Civil Application was filed on 01.02.2003. The same is pending but no orders are passed.

46. The learned senior counsel submitted that meanwhile in late hours of 31.01.2003 and early hours of 01.02.2003, Shri Rakeshprasadji is alleged to have been appointed as 'Acharya'. He submitted that this is an act to overreach the process of the Court and should be viewed very seriously. He submitted that Appeal From Order be allowed, order passed below Exh.5 in Special Civil Suit No.156 of 2002 be quashed and set aside and the appointment of Shri Rakeshprasadji as Acharya be also quashed.

Mr.S.N. Shelat, learned senior counsel opened his submissions summarising the contentions/ submissions made by Mr.Vakil. He submitted that according to him following are the contentions:(i) present suit-Special Civil Suit

No.156 of 2002 (Nadiad) is not maintainable in view of clause 47 of the Scheme (supra); (ii) the suit is barred under section 80 of the Bombay Public Trusts Act and thereby civil court has no jurisdiction to entertain the suit; (iii) as a suit filed at Ahmedabad after the order of this Court in Appeal From Order No.284 of 2002, Civil Revision Application No.650 of 2002 dated 14.08.2002 was withdrawn without specific permission to file a fresh suit, the present suit is barred under Order XXIII, Rule 1 of the Code.

47. Learned senior counsel Mr.Shelat submitted that in this Appeal From Order the appellants have not challenged the order passed below Exh.19-an application filed by the original defendants-appellants herein, praying to reject the plaint under Order VII, Rule 11 and therefore, the appellants cannot be allowed to press for the rejection of the plaint. He submitted that though Exh.19 is rejected in terms by the order under challenge, the appellants have not challenged the same. The appellants have chosen to restrict their Appeal From Order against grant of interim order only. The learned senior counsel invited the attention of the Court to paras 1 & 3 of the memo of Appeal. Mr.Shelat submitted that the order rejecting Exh.19 is an 'interlocutory order' and it

cannot now be challenged. In support of contention he placed reliance on a decision of the Hon'ble the Apex Court in the matter of **Satyadhan Ghosal and others Vs. Smt.Deorajin Debi and another**, reported in A.I.R. 1960 SC 941. Mr.Shelat relied upon the observations made by the Hon'ble the Apex Court in para 8 of the judgement, which reads as under:

> "The principle of res judicata applies also as **between two stages in the same litigation** to this extent that a court, whether the trial court of a higher court having at an earlier stage decide a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a **higher court cannot at a later stage of the same litigation consider the matter again**?"

48. Mr.Shelat, learned counsel next relied upon a decision of the Hon'ble the Apex Court in the matter of **Arjun Singh Vs. Mohindra Kumar and others,** reported in

A.I.R. 1964 SC 993. Mr.Shelat submitted that the Hon'ble the Apex Court has held that principle of res judicata applies even at different stages of the same proceeding. He invited attention of the court to the observations made by the Hon'ble the Apex Court in para 10 of the said judgement, which reads as under.

> "10. .. .. that the scope of the principle of res judicata is not confined to what is contained in S.11 but is of more general application is also not in dispute. **Again, res judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits.** .. .."

49. In this para the Hon'ble the Apex Court referred to its earlier decision in the matter of **Satyadhan Ghosal** (supra). Mr.Shelat submitted that the observations of the the Hon'ble the Apex Court in para 11 of the said judgement are also relevant in the facts of the case, which reads as under:

> "This view was re-affirmed by the Privy Council in Forbes V. Ammeroonissa Begum, 10 Moo Ind App 340. A decree for possession with mesne profits having

been made against the defendant by the Civil Judge, Purneeha on December 18, 1834 the defendant appealed to the Sardar Diwani Adalat. That a Court by its order dated January 22, 1857 held that the Civil Judge had been wrong in decreeing the mesne profits and further that the plaintiff was bound before he was entitled to have his conditional sale made absolute to render certain accounts. Accordingly, the Sardar Diwani Adalat remanded the case in order that the judge might call upon the plaintiff for his accounts and then decide the case in the light of the remarks made by th Adalat. After the case went back the plaintiff produced accounts but the judge held that they were insufficient and dismissed the suit. An appeal was taken against that decree of dismissal to the Sardar Diwani Adalat but the appeal was unsuccessful; a later prayer for review was also rejected. On behalf of the appellant it was contended before the Privy Council that the Sardar Diwani Adalat was wrong in requiring the appellant to produce his accounts. In order however, that this question could be raised, it was necessary to decide, whether if the Sardar Diwani Adalat was wrong in remanding the case for re-trial the appellant was bound by

that decree he not having appealed therefrom. Their Lordships of the Privy Council pointed out that the order of remand was an interlocutory order and that it did not purport to dispose of the case and consequently upon the principle laid down by the Privy Council in 7 Moo Ind. App 283 (supra), the appellant was not precluded from insisting that the remand for the production of the accounts was erroneous or that the cause should have been decided in his favour, notwithstanding the non production of accounts. Their Lordships also mentioned the fact that the learned judges of the Sadar Court also treated the latter point as still open to the appellant, when considering his appeal against the decree of dismissal passed after remand."

50. Mr.Shelat, learned senior counsel relied upon a decision of the Hon'ble the Apex Court in the matter of **Smt.Sukhrani (dead) by L.Rs. and others Vs. Hari Shanker and others,** reported in A.I.R. 1979 SC 1436, in particular the observations in para 5 read as under :

"5. It is true that at an earlier stage of the suit, in the proceeding to set aside the award,

> the High Court recorded a finding that the plaintiff was not entitled to seek reopening of the partition on the ground of unfairness when there was neither fraud nor misrepresentation. It is true that the plaintiff did not further pursue the matter at that stage by taking it in appeal to the Supreme Court but preferred to proceed to the trial of his suit. It is also true that a decision given at an earlier stage of a suit will bind he parties at later stage of the same suit. But it is equally well settled that because a matter has been decided at an earlier stage by an interlocutory order and no appeal has been taken therefrom or no appeal did lie, a higher court is not precluded from considering the matter again at a later stage of the same litigation. .. ..”

51. Having considered the rival submissions on the point, this Court is of the opinion that Appeal From Order is filed/ restricted only against the order 'granting interim relief' and not the order 'rejecting application, Exh.19', it is not open to the appellants to pray for 'rejection of the plaint' at this stage. However, it is clarified that it will be open to the

original defendants to contend that there being no prima facie case, no injunction should have been granted by the trial court.

52. Mr.Shelat, the learned senior counsel next submitted that the bar under section 80 of the Bombay Public Trusts Act will be attracted only if any relief as contemplated under section 79 of the Act is sought for. He submitted that on a plain reading of the plaint along with the relief clause it is clear that no relief is claimed under section 79 of the Act. To elaborate, he submitted that the plaintiffs have not raised any question about the existence of a trust or about the trust being a public trust or not, or with regard to any property being property of such trust or not. He submitted that when any of these questions are raised the same are required to be decided or dealt with by an officer or authority as provided in sec.79 of this Act. He submitted that, that being so the matter is not barred under section 80 of the Bombay Public Trusts Act.

Mr.Shelat, the learned senior counsel next submitted that the present suit is not barred even by section 50 of the Act. He submitted that none of the reliefs prayed for in Special Civil Suit No.156 of 2002 falls within the

ambit of section 50 of the Act and hence, section 50 has no application to the facts of the present case. He made a similar submission for section 51 also.

53. The learned senior counsel, at this stage made a specific reference to Special Civil Suit No.156 of 2002 and submitted that the plaint is based on the fact that the Acharya is already deposed by a Resolution of Satsang Mahasabha and the only relief sought for is the implementation of the said Resolution.

At this juncture, Mr.Shelat, the learned senior counsel brought to the notice of the Court that defendant no.1 himself had filed Civil Suit No.45 of 2002 in the Court of the learned Civil Judge (SD), Nadiad seeking the following reliefs:

> "(A) A declaration be granted in the favour of the plaintiff and against the defendants that the plaintiff has the right of independence and the right to administer religious affairs under articles 15, 19, 25 and 26 of the constitution of India.
>
> (B) A decree be granted in the favour of the plaintiff and against the defendants ordering

that according to as described in the Desh Vibhag Lekh written by Param Pujya Sadgat Guru Shri Sukanand Muni written in Darbar of Shri Ebhal Khachar on Magsar Sud Poonam of Samvat year 1883 as well as according to the provisions of the scheme framed by the Hon'ble High Court of Gujarat in the judgment dated 04.12.1973 rendered in First Appeal No.543 of 1970 and Letters Patent Appeal No.184 of 1973, the Managing Board, Tyagis/Sadhus, Bhramcharis, Palas or Haribhakts have no right to depose the existing Acharya and that they do not have the right to appoint new Acharya without following legal procedures.

(C) That the plaintiff has inherent constitutional religious rights and authority under Articles 15, 19, 25 and 26 of the Constitution of India and thereby permanent injunction be granted in favour of the plaintiff and against the defendants so as not to prevent him from performing Pooja, Seva, Katha – Discourses, Aarti and other religious duties of and pertaining to the Swaminarayan Mandir at Vadtal and the Swaminarayan Temples subordinate to it and to permanently restrain them from

causing any kind of hindrances, obstruction, interferences in the acts to the plaintiff.

(D) A permanent injunction in favour of the plaintiff and against the defendants be granted ordering that according to as described in the Desh Vibhag Lekh written as well as according to the provisions of the scheme as settled by the Hon'ble Court, the Managing Board, Tyagis/Sadhus, Bhramcharis, Palas or Haribhakta have no right to depose the existing Acharya and that they do not have the right to appoint new Acharya without following legal procedures.

(E) That on basis of proof of facts and considering the documentary evidence and other relief/reliefs as may be deemed just to the Hon'ble Court be granted in favour of the plaintiff.

(F) Since this suit is required to be filed on account of the fault of the defendants, all costs of this suit be awarded from them to the plaintiff."

He submitted that this shows that defendant no.1 himself has found the 'civil court' has the jurisdiction to adjudicate and grant reliefs as prayed for.

54. The learned senior counsel, Mr.Shelat submitted that if the judgement of this Court in First Appeal No.543 of 1970, confirmed in Letters Patent Appeal No.183 of 1973 and the scheme formulated thereunder is perused, it is clear that 'the Acharya' hold the property as a 'custodian-trustee'. He submitted that the term, “custodian-trustee” is not defined under the Bombay Public Trusts Act, but then the term, 'trustee' is defined in subsection (18) of sec.2 as under:

> “trustee: means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager;”

Besides, the term 'Manager' is defined in subsec.(8) of sec.2, which reads as under:

> subsec.(8) of sec.2:
> “manager” means any person (other than a trustee) who for the time being either alone or in association with some other person or persons administers the trust property of any public trust and includes --
> (a) in the case of a math, the head of such

math,

(b) in the case of a wakf, a mutavalli of such wakf,

(c) in the case of a society registered under the Societies Registration Act, 1860 (XXI of 1860) its governing body, if the property of the society is not vested in a trustee;”

55. He submitted that in the present case the property is not vested in 'the Acharya' and the purpose and the reasons for the same are found in the judgement. It is only to achieve the same that the court imported the concept of 'custodian-trustee' and appointed 'the Acharya' as a 'custodian-trustee'.

56. Mr.H.M. Parikh, the learned advocate appearing for the appellants made available a copy of 'Public Trustees Act, 1906' (from Halsbury's Law of Statute) for the perusal. In that Act section 4 deals with the custodian-trustee. Subsec.(1) of sec.4 provides that, 'subject to rules under this Act a public trustee on his consenting to Act as such, can be appointed to be custodian trustee of any trust' --

(a) by order of the court made on the

application of any person on whose application the court may order the appointment of a new trustee; or

(b) by the testator, settlor or other creator of any trust; or

(c) by the person having power to appoint new trustees.

Subsec.(2) of sec.4 provides the effect of appointment of custodian trustee. The same is reproduced for ready perusal.

Subsec.(2) of sec.4 :

“Where the public trustee is appointed to be custodian trustee of any trust --

(a) The trust property shall be transferred to the custodian trustee as if he were sole trustee, and for that purpose vesting orders may, where necessary, be made under the Trustee Act, 1893:

(b) The management of the trust property and the exercise of any power or discretion exercisable by the trustees under the trust shall remain vested in the trustees other than the custodian trustee (which trustees are

hereinafter referred to as the managing trustees):

(c) As between the custodian trustee and the managing trustees, and subject and without prejudice to the rights of any other persons the custodian trustee shall have the custody of all securities and documents of tile relating to the trust property, but the managing trustee shall have free access thereto and be entitled to take copies thereof or extracts therefrom:”

Mr.Shelat, the learned senior counsel submitted that this provision is verbatim incorporated in the Scheme as clauses (d) and (i) which are as under:

“(d) The custodian trustee shall concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into court), unless the matter in which he is requested to concur is a breach of trust, or involves a personal liability upon him in respect of calls or otherwise, but, unless he so concurs, the custodian trustee shall not be

liable for any act or default on the part of the managing trustees or any of them:

(e) ...

(f) ...

(g) ...

(h) ...

(i) The court may, on the application of either the custodian trustee, or any of the managing trustees, or of any beneficiary, and on proof to their satisfaction that it is the general wish of the beneficiaries, or that on other grounds it is expedient, to terminate the custodian trusteeship, make an order for that purpose and the court may thereupon make such vesting orders and give such directions as under the circumstances may seem to the court to be necessary or expedient."

57. Mr.Shelat, the learned senior counsel submitted that the Court having found a solution in the concept of the 'custodian trustee' to a great extent but not exactly upto the requirement of the facts of the case, the Court incorporated the same in the Scheme with the observations in the judgement that the position of Acharya under the scheme will not be exactly that of

custodian trustee but will be akin to the custodian trustee. (emphasis supplied)

58. Mr.S.N. Shelat, the learned senior counsel submitted that 'holding' and 'vesting' are two different concepts and are not synonyms by any standard. He invited attention of the Court to the judgement of Bombay High Court whereby the first scheme was framed. He also invited attention of the Court to the judgement in First Appeal No.543 of 1970 which is confirmed in Letters Patent Appeal No.183 of 1973, under which the present scheme is framed and is in operation. He submitted that a perusal of the aforesaid material will show that the status of Acharya, his powers and duties are if perused, the same can be divided in two different clauses, viz. (i) temporal duties, and (ii) religious duties. He submitted that so far as temporal duties are concerned in view of the fact that his position is made 'akin' to the 'custodian trustee', he has hardly any temporal duty to perform, except keeping custody of the property documents.

Mr.Shelat submitted that under 'Desh Vibhag No Lekh' also Acharya is assigned 'religious duties' and these duties are recognized by various courts when the question arose

for their consideration. He submitted that in case there is any controversy on the point of 'effect of ancient instruments', it is to be ascertained in light of the evidence. He submitted that according to him the duties assigned to the Acharya are predominantly of religious nature under 'religious scriptures' of Swaminarayan Sampraday. But then if the exact meaning of the contents of these documents is brought in question, the same can be sorted out only by leading evidence at the time of trial. In support of his submission he relied upon para 1498 of Halsbury's Laws of England, Fourth Edition (Volume 12), which is as under”

> “**Evidence of conduct.** If, after other methods of interpretation have been exhausted, there remains a doubt as to the effect of an ancient instrument, it is permissible to give evidence of the acts done under it as a guide to the intention of the parties, in particular, of acts done shortly after the date of the instrument. Evidence of the acts done cannot, however, be admitted to contradict the clear meaning of the instrument. .. ..”

59. He submitted that so far as religious duties are

concerned any court could not have conferred any religious duties on 'Acharya' because 'Acharya' is not an individual but it is an institution, established by Shri Sahajanand Swamy himself. He submitted that almost every litigation which took place either in 'northern diocese' or 'southern diocese', all courts have taken judicial notice of the religious duties prescribed/ assigned by the founder of the Sampraday-Shri Sahajanand Swamy. He submitted that these religious duties are duly recognised by the courts from time to time including the present scheme. In this regard he invited attention of the Court to clause 4 of the Scheme, which is as under:

> “4. 'Acharya', his powers and duties.
>
> (a) The Acharya is the supreme Religious and Spiritual Authority in the southern diocese. His authority in matters of religion, traditions precepts, conventions, festival of the Sampradaya and ritual Seva PUJA in the temple shall always prevail.
>
> (b) It is the duty of the Acharya to initiate and give DIKSHA in accordance with religious precepts of Sampraday after considering the recommendations, if any, of the Chief Kothari.”

60. So far as temporal duties are concerned or his position of 'Acharya' as 'custodian trustee' is concerned, clause 5 of the Scheme is material. Clause 5 reads as under:

> "5. The trust property shall be held by the Acharya as a custodian trustee without any rights of management and administration thereon whatsoever vesting in him. He shall have custody of all documents of title relating to the immovable properties, share and securities. But the Board shall have free access thereon and be entitled to take copies or extracts therefrom."

Mr.S.N. Shelat submitted that Clause 6 is again to put the 'Acharya' in the position of 'custodian trustee', to be precise, '**akin**' to the 'custodian trustee'. Clause 6 reads as under:

> "6. The Acharya shall concur in and perform all acts necessary to enable the Board to exercise their powers of management or any other power or direction vested in them, unless the matter in

which he is required to concur is a breach of trust and he shall not be held liable for any act of default on the part of the Board or any of them, unless he so concurs.

PROVIDED that in the event of Acharya failing to perform and carry out a particular act or decision of the Board, within a period of fortnight form the date of the decision of the Board it shall be performed and carried out by the Bord in the manner prescribed by it and such act of the Board shall be as effective and binding as if carried out by the Acharya.

PROVIDED FURTHER that the Acharya in that case shall not be personally responsible for such acts or decisions unless he expressly concurs thereto."

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61. Mr.Shelat, the learned senior counsel submitted that the perusal of the aforesaid clauses 4, 5 & 6 of the Scheme and other relevant clauses of the scheme makes it clear that the 'temporal duties' and 'religious duties'

are separately described in the scheme. He submitted that in that view of the matter the reliefs sought for by the plaintiffs in Special Civil Suit No.156 of 2002 are necessarily of religious character and the same do not in any way seek any modification, alteration or variation of the scheme. He submitted that as against that in the written statement, defendant no.1-the present appellant has put forward a claim that 'he is not validly removed from the post of Acharya', which is not a matter of public right. It relates to a dispute pertaining to a title to religious office, namely, “Acharya”. For that as stated hereinabove the present appellant has already filed a suit being Civil Suit No.45 of 2002 in the Court of learned Civil Judge (SD), Nadiad, on 11.02.2002, i.e. much prior to passing of the impugned Resolution dated 11.05.2002. But then for the reasons best known to the appellant-original defendant no.1 he has not pursued that remedy. The learned senior counsel submitted that as it is the case of defendant no.1-appellant herein that he is not validly removed from the post of 'Acharya' and he still continues to be the Acharya, it is for him to seek necessary relief in the suit filed by him, by moving necessary amendment, if so required, as on the date of filing of the suit, i.e. 11.02.2002, there was no Resolution removing him from the

post of Acharya, (the same was passed on 11.05.2002).

Mr.Shelat, the learned senior counsel submitted that the civil court is the only forum to which the plaintiffs could have approached and sought the reliefs prayed for. He submitted that the suit is rightly entertained by the learned Judge and has rightly granted injunction. In support of his submission he relied upon a decision of the Hon'ble the Apex Court in the matter of **Swami Paramatmanand Saraswati and another Vs. Ramji Tripathi and another** reported in (1974) 2 SCC 695. He next relied upon a decision of the Hon'ble the Apex court in the matter of **The Commissioner, Hindu Religious Endowments, Madras Vs. Shri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**, reported in 1954 SCR 1005, to support his contention that in the rights of 'Mahant' ingredients of both 'office' and 'property', of 'duties' and 'personal interest' are blended together. He submitted that 'Mahant' has the right to enjoy this property or beneficial interest so long he is entitled to hold his office. He drew the attention of the Court to the observations made by the Hon'ble the Apex Court at page 1019 in the said decision.

“.. .. Thus, in the conception of

> Mahantship, as in Shebaitship, bot the elements of office and property, of duties and personal interest are blended together and neither can be detached from the other. The personal or beneficial interest of the Mahant in the endowments attached to an institution is manifested in his large powers of disposal and administration and his right to crate derivative tenures in respect of endowed properties; and these and other rights of a similar character invest the office of the Mahant with the character of proprietary right which, though anomalous to some extent, is still a genuine legal right. It is true that the Mahantship is not heritable like ordinary property, but that is because of its peculiar nature and the fact that the office is generally held by an ascetic, whose connection with his natural family being completely cut off, the ordinary rules of succession do not apply."

62. Mr.Shelat, the learned senior counsel submitted that in the present case as submitted hereinabove, 'the Acharya' do not have intermingled 'temporal' and 'religious' duties and therefore, he is not at par with

'Mahantship' or Shebaitship'. He submitted that therefore, the suit (Special Civil Suit No.156 of 2002) in its present form was rightly filed and was rightly entertained, and the learned Judge committed no error in granting the injunction as prayed for. He submitted that in this view of the matter the decision of Privy Council in the matter of **Satishchandragiri** (supra); in the matter of **Laxmanrao Umajirao** (supra) have no application to the facts of the present case.

63. Mr.Shelat, the learned senior counsel to bring home the distinction between the 'vesting' of a property and 'holding of a property', relied upon a decision of the Hon'ble the Apex Court in the matter of **B.O.I Finance Ltd. Vs. Custodian and others**, reported in (1997) 10 SCC 488. He invited attention of the Court to the observations made by the Hon'ble the Apex Court in paras 12 & 13, which are as under:

> “12. Section 4 of the Act gives the custodian the power to cancel such contracts or agreements which have been entered into fraudulently. That apart, he is merely a custodian of the properties of the notified persons which stand attached under the Act and such properties are

to be dealt with by him in such a manner as the Special Court may direct.

13. The Act shows that the Custodian has three main functions to perform. Firstly, he has the authority to notify a person under section 3(2) who has been involved in any offence relating to transactions in securities during the period 1-4-1991 to 6-6-1992. Secondly, he has been given the authority by section 4 to cancel contracts or agreements relating to the properties of the notified persons, which in his opinion, have been entered into fraudulently or for the purpose of defeating the provisions of the Act. Lastly, he is required to deal with properties in the manner as directed by the Special Court. To put it simply the custodian is required to assist in the attachment of the notified person's property and to manage the same thereafter. The properties of the notified persons, whether attached or not, do not at any point of time, vest in him. He is merely a Custodian and his position is not like that of a Receiver under the Civil Procedure Code (Section 94, Order 44) or an Official Receiver under the

Provincial Insolvency Act or Official Assignee under the Presidency Insolvency Act. There is no vesting of the attached properties of the notified persons in the Custodian. .. ..”

Mr.Shelat, the learned senior counsel emphatically submitted that same is the position of 'Acharya' under the scheme, he has two different types of duties to perform; 'temporal' and 'religious'. He submitted that despite that the hard reality is that predominantly he has to perform the religious duties only because being 'custodian trustee' he hardly has no 'temporal duties' to perform except the solitary one, that is to maintain custody of documents of the property to be made available as and when required. He relied upon the following decisions of the Hon'ble the Apex Court in this regard.

(i) 1961 SCR 930 : A.I.R. 1961 SC 1206, and
(ii) 1957 Supreme Court Reports 1.

64. Mr.Shelat, the learned senior counsel submitted that it is not open to the appellants to contend that the suit before Nadiad Court (Special Civil Suit No.156 of 2002) is not maintainable in view of the provisions of Order XXIII, Rule 1 of the Code, because this point is not

urged in the written statement. He submitted that even at the cost of repetition he be permitted to submit that the 'principle of res judicata' is applicable. He submitted that besides that as the learned Judge of Nadiad Court did not have an opportunity to deal with this aspect, the order passed by the learned Judge cannot be challenged on that ground.

He, however, submitted that the application which is referred to-Purshis which was filed before the learned Civil Judge (SD), Ahmedabad (Rural) was for 'return of the plaint', and the order passed thereunder is also to that effect. Therefore, the contention that 'the suit filed before Ahmedabad Court was withdrawn and hence, the suit before Nadiad Court is not maintainable in light of the provisions of Order XXIII, Rule 1 of the Code', is not worth accepting. He very emphatically submitted that the same plaint which was filed before the Bhavnagar Court has been filed before the Nadiad Court.

Mr.Shelat, the learned senior counsel submitted that in addition to what is submitted hereinbefore it is also required to be taken into consideration that though this fact of 'return of plaint' and order passed on 04.09.2002 was within the knowledge of the appellants-

original defendants, they have not chosen to challenge the same. He submitted that therefore, they should not be allowed to agitate this point now at this stage before this Court. He reiterated that as this ground is not taken in the written statement, the appellants be restrained from agitating this point.

65. Mr.Shelat submitted that similar is the position with regard to the maintainability of the suit filed by the plaintiff. He submitted that from the reliefs sought in the suit it is clear that no relief/s fall(s) within the purview of sec.79 of the Act and therefore, even remotely it cannot be contended that the suit is barred by the provisions of the Bombay Public Trusts Act. In fact the plaintiffs are not seeking modification, alteration or variation of the scheme.

66. On account of ill health, learned senior counsel, Mr.S.B. Vakil, is not available to reply the submissions of Mr.Shelat. Mr.Y.N. Oza, learned senior counsel with able assistance of Mr.H.M. Parikh discharged that duty.

67. The learned senior counsel reiterated the submissions made by Mr.Vakil and invited the attention of the Court once again to the relevant documents,

particularly, the scheme with due emphasis on various relevant clauses, like 7, 42 & 43. The learned senior counsel submitted that when the present appellant was appointed as Acharya, a mutation entry was effected in the Public Trust Register, which is at page 30 of Volume 3 of Public Trust Register. The learned senior counsel distinguished the concept of 'custodian trustee' and the institution of 'Acharya'. The learned senior counsel reiterated with all vehemence that in view of the fact that clause 47 of the scheme is operative, the provisions of sections 50 & 51 of the Bombay Public Trusts Act are applicable and hence suit is not maintainable. The learned senior counsel invited attention of the Court to various sections of the Bombay Public Trusts Act, namely, sections 18, 19, 20, 21, 22, 41A, 50, 51, 70 & 72 and submitted that it is only the officers/ authorities under the Bombay Public Trusts Act are required to be approached for any relief, of the nature which is sought for by the plaintiffs in Special Civil Suit No.156 of 2002.

68. The learned senior counsel next invited the attention of the Court to the 'Change Report', which is at page 9, Volume III of Paper Book of this Appeal From Order and other relevant papers and submitted that the

Charity Commissioner had passed an order which is not challenged and hence it has become final. The learned senior counsel submitted that in view of the provisions of subsection (3) of sec.22 of the Bombay Public Trusts Act, amendment in the entries is final and conclusive.

69. The learned senior counsel during the course of his reply to the submissions of Mr.Shelat submitted that the decision the Hon'ble the Apex Court in the matter of **The Commissioner, Hindu Religious Endowments, Madras** (supra) is not applicable to the facts of the present case. He submitted that the decisions relied upon by Mr.Vakil, learned senior counsel in the matter of **Laxmanrao Umajirao** of the Privy Council and Nagpur High Court (supra) are applicable. Similarly, it was submitted that the decision in the matter of **Swami Paramatmanand Saraswati and another Vs. Ramji Tripathi and another,** reported in (1974) 2 SCC 695, is not applicable.

70. The learned senior counsel submitted that it is a well settled legal position that any misrepresentation made either intentionally or unintentionally is a fraud. In support of this submission, he relied upon a decision of the Hon'ble the Apex Court in the matter of **Bhaurao**

Dagdu Paralkar Vs. State of Maharashtra and others, reported in 2005 A.I.R. SCW 4094. He relied upon the observations of the Hon'ble the Apex Court in para 10 to 14, and put special emphasis on the following observations.

> “Fraud is proved when it is shown that a false representation has been made, (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false”

The learned senior counsel next submitted that in the present case also the plaintiffs did make a misrepresentation when they filed a Purshis before the learned Civil Judge (SD), Ahmedabad (Rural) for return of the plaint. He submitted that the phrase, “However, in this matter **by the Hon'ble High Court** jurisdiction is of Vadtal ... “ is a clear misrepresentation and that too, to the knowledge of the party, because the order of this Hon'ble Court passed in Appeal From Order No.284 of 2002 and Civil Revision Application No.650 of 2002, did not have such phrase. In fact the order of this Court was that, “On the plaintiff making an application to that effect the Court below shall return the plaint to

the plaintiffs for presentation before appropriate forum".

The learned counsel vehemently submitted that it was only due to the aforesaid misrepresentation that the learned Judge passed the order as under:

> "In the matter according to the order of the Hon'ble High Court and the facts of the dispute this Court does not find jurisdiction, returns the plaint for presentation to the proper court as demanded."

The learned senior counsel submitted that on this short ground the suit of the plaintiff must fail.

71. The learned senior counsel submitted that the expression used in documents/ precepts of the Sampradaya must be interpreted in light of the meaning given to such expression by a particular class, in a particular place. The same should not be interpreted giving them ordinary/ popular meaning. He further submitted that in fact evidence will be required to be led for the true and correct interpretation of the expressions used at the time of inception of the instrument. In support of his

submission he relied upon para '1496' of Halsbury's Laws of England, Fourth Edition. The learned senior counsel also relied upon a decision of the Hon'ble the Apex Court in the matter of **Krishna Singh Vs. Mathura Ahir and others,** reported in A.I.R. 1980 SC 707 with a special reference to para 17, which is as under:

> “17. It would be convenient, at the outset, to deal with the view expressed by the High Court that the strict rule enjoined by the Smriti writers as a result of which Sudras were considered to be incapable of entering the order of yati or sanyasi, has ceased to be valid because of the fundamental rights guaranteed under Part III of the Constitution. In our opinion, the learned Judge failed to appreciate that Part III of the Constitution does not touch upon the personal laws of the parties, he could not introduce his own concepts of modern times but should have enforced the law as derived from recognised and authoritative sources of Hindu law, i.e. Smritis and commentaries referred to, as interpreted in the judgements of various High Courts, except where such law is altered by any usage or custom or is

modified or abrogated by statue.”

72. The learned senior counsel submitted that in the present case also the dispute as to the true and correct interpretation of the phrases used in the documents/ precepts of the 'Sampradaya' be resolved by giving them the meaning which prevailed at the time of inception of the documents and not the meaning of modern times. The learned senior counsel submitted that even at the cost of repetition he be allowed to reiterate that the suit filed before Nadiad court being Special Civil Suit No.156 of 2002 is barred under the provisions of Order XXIII, Rule 1 of the Code of Civil Procedure. He submitted that under Order VII, Rules 10 and 10A of the Code a specific procedure is prescribed but then the same is not followed in the present case, because what was intended was 'withdrawal' of the suit, and not the 'return of the plaint'. The learned senior counsel submitted that his submission can better be appreciated if false statement made in the Purshis is ignored, it remains an application for 'withdrawal of the suit' and therefore, the present suit must be held to be barred under Order XXIII, Rule 1 of the Code.

73. Replying to the submission of Mr.Shelat, 'not

pressing this point before the trial court', the learned senior counsel submitted that it is specifically pleaded in the written statement that, 'the court has no jurisdiction' is broad enough to cover this point. He submitted that averments in para 3 of the written statement that, 'the court has no jurisdiction' and that 'the court has no jurisdiction to adjudicate on the subject matter of the suit' should be construed to mean that this point was raised, if not directly then indirectly. The learned senior counsel submitted that the 'question of jurisdiction' goes to the very root of the matter and therefore, this Court should probe into the matter and record its finding whether the trial court has jurisdiction or not.

The learned senior counsel next submitted that if the court has no jurisdiction to try the suit, it could not have granted any injunction. The learned senior counsel relied upon a decision of the Hon'ble the Apex Court in the matter of **Shree Subhlaxmi Fabrics Vs. Chand Mal Baradia and others,** reported in 2005 AIR SCW 1807.

74. The learned senior counsel submitted that the appellant-original defendant had filed an application, exh.19 under Order VII, Rule 11 for rejecting the plaint in the month of September 2002 before filing of written

statement on 26.09.2002. He submitted that the learned Judge ought to have decided the question of jurisdiction first. He submitted that in not doing so the learned Judge has committed an error which is to be corrected by this Court.

75. Mr.P.M. Raval, the learned senior counsel appearing for appellants in Appeal From Order No.69 of 2003 with Mr.Harin P. Rawal made his submissions only on the limited points which according to him were required after the learned senior counsel for the appellants made rejoinder. He submitted that the contention of 'fraud' is required to be pleaded specifically with all necessary particulars before such a plea is set up. In this regard he invited attention of the Court to the provisions of Order VI, Rule 4 of the Code. He submitted that in absence of the particulars, the plea of 'fraud' cannot be accepted and be rejected.

The learned senior counsel, Mr.Raval submitted that it is important to note that the order passed by Bhavnagar Court in Special Civil Suit No.144 of 2002, which was challenged by the present appellants by filing Appeal From Order No.284 of 2002 was never stayed by this Court. He submitted that after hearing both the sides

an order was passed in Civil Application No.4612 of 2002 in Appeal From Order No.284 of 2002. The order reads as under:

> "(i) The present appellants should be allowed to enter all the temples under 'Vadtal Desh' (southern diocese)in their individual capacity for performing Darshan and Puja including Arti.
>
> (ii) Rest of the order shall not operate on an assurance given by appellant no.1 who is present before the Court that he will not be organising 'Dhun' or any other proceedings under the same and will not be holding any meeting/congregation. He will also refrain from addressing such meeting within the premises of any temple of Vadtal Desh (southern diocese)."

76. The learned senior counsel, Mr.Raval submitted that since then appellant no.1 has never acted as 'Acharya'. He further submitted that thereafter, the said Appeal From Order was disposed of along with Civil Revision Application No.650 of 2002 by order dated 14.08.2002. Thereafter, the present suit-Special Civil Suit No.156 of 2002 is filed wherein ex parte injunction is granted on 06.09.2002. Later on that injunction is confirmed by the learned Judge of the trial court, after hearing both the sides on 01.10.2002. Learned senior counsel Mr.Raval

requested that even at the cost of repetition he be allowed to submit that under the scheme 'Acharya' is an 'ex officio custodian trustee'. It was only because defendant no.1-appellant herein was 'Acharya', he was 'custodian trustee'. He submitted that under the scheme who ever is the 'Acharya' will be the 'custodian trustee'.

Mr.Raval submitted that the congregation of Sants/ Sadhus/ Tyagis along with Haribhaktas/ Satsangis is referred to as “Satsang Mahasabha” in the present proceedings. He submitted that the author of 'Des Vibhag No Lekh', namely, Shri Sahjanand Swamy has referred to such congregation of Sants/ Sadhus/ Tyagis along with Haribhaktas/ Satsangis as “Dharmsabha”. Therefore, it is not correct to say that 'Satsang Mahasabha' is formed for the first time for deposing the present Acharya. He submitted that in yet another precepts of Sampradaya that is “Shri Hari Lila Amratam”, which is not referred to hereinabove a reference of “Dharmsabha” is found and the same is at par with “Satsang Mahasabha” of the present.

77. With this Appeal From Order No.421 of 2002, Appeal From Order No.69 of 2003 is also heard as ordered by this Court (Coram: P.B. Majmudar, J.). The relevant

part of the order reads as under:

> ".. .. It is required to be noted that since separate Civil Application is preferred by the appellant for interim relief, it is not necessary to discuss all other aspects in this order. Only few reasons are given by this Court, at this stage, as to why this Court has thought it fit to admit this matter, even though the appeal is filed at a stage when the ad interim relief is granted by the trial court and the matter is at large before the trial court and the other side is yet to be heard by the trial court. .. .."

The Court was pleased to order that,

> ".. .. Since the trial court was of the opinion that in order to overreach the process of this Court in a subjudice matter being Appeal From Order no.421/2002, the defendants have appointed the Acharya, and since the trial Court was of the opinion that the defendants nos.2 to 9 shall not give any duty to the defendant no.1 without seeking the prior permission of the High

> Court in the pending proceedings, in my view, the present Appeal From Order is required to be heard with Appeal From Order no.421/2002, especially when, the said appeal is already on the final hearing Board and most of the grievances raised in this Appeal From Order as well as in the suit are interconnected with Appeal From Order no.421/2002 which is already on the final hearing Board of this Court. Accordingly, the present AO is ordered to be heard with Appeal From Order no.421/2002."

78. Appeal From Order No.69 of 2003 arises from an ex parte ad interim order passed by the learned Civil Judge (SD), Anand in Civil Suit No.17 of 2003. The subject matter of this litigation, that is challenge to the appointment of Acharya Shri Rakeshprasadji has the direct bearing on litigation. In earlier litigation deposition of Acharya by Satsang Mahasabha is under scrutiny. The facts leading to the filing of this Appeal from Order No.69 of 2003 can be summarised as under, which will give a bird's eye view of the facts and will be useful to recapitulate the entire controversy.

It is on record that Satsang Mahasabha in its meeting

dated 11th May 2002 passed a Resolution deposing the then Acharya, and appointed a Committee to carry out a search for a suitable person, who can be appointed as new Acharya from “Dharm Kul”. The plaintiffs of Special Civil Suit No.156 of 2002 had earlier filed a civil suit before Bhavnagar Court wherein at initial stage no injunction was granted, but was granted subsequently, the same was challenged by the erstwhile Acharya on the ground that the Court had no jurisdiction. The matter had come up to this Court. The learned advocate for the plaintiffs agreed to withdraw the suit. This Court had directed the court below to return the plaint to the plaintiffs for presentation before appropriate forum. Thereafter, a suit was filed before the learned Civil Judge (SD), Ahmedabad (Rural). But then the plaintiffs prayed for return of the plaint which was granted. The plaintiffs then filed the suit before Nadiad Court (Special Civil Suit No.156 of 2002). The learned Judge at Nadiad granted ex parte ad interim order on 06.09.2002 which was later on confirmed on 01.10.2002. The order of grant of interim relief is under challenge in Appeal From Order No.421 of 2002 along with Civil Application No.7250 of 2002. Civil Application No.7250 of 2002 is rejected by this Court by order dated 30.01.2003. Till 30.01.2003 a statement made by the

learned advocate for the opponents in that Appeal from Order that, 'no new Acharya will be appointed' was in operation. But then on 30.01.2003, as is recorded by the learned Judge (Coram: R.P. Dholakia, J.), after the pronouncement of the order rejecting Civil Application No.7250 of 2002, a request was made by the learned advocates for the appellants to extend the said statement. In response to that request the learned senior counsel, Mr.P.M. Rawal and Mr.P.G. Desai appearing for the opponents expressed their inability to extend the same as the opponent was not present. Thereafter, a request was made by the learned advocate to place the matter (Appeal From Order No.421 of 2002) before the Court on the next day, so as to pray and press for appropriate orders. Before the learned advocate could obtain any orders in Appeal From order No.421 of 2002 by getting the matter placed on Board on 31.01.2003 a new Acharya was appointed. The appellants of Appeal From Order No.421 of 2002 then filed Civil Application No.611 of 2003, which was pending till date and is disposed of along with these matters.

The appointment of new Acharya is challenged by filing a suit and there the learned Judge granted interim orders which is the subject matter of Appeal From Order No.69 of

2003.

79. Civil Application No.7250 of 2002 in Appeal From Order No.421 of 2002 is notified along with other matters, but then this Civil Application is already disposed of by this Court (Coram: R.P. Dholakia, J.) vide judgement and order dated 30.01.2003.

To challenge the appointment of new Acharya certain persons filed Special Civil Suit No.17 of 2003 on 16.02.2003 in the Court of the learned Civil Judge (SD) at Anand and obtained an order on the same day, i.e. 16.02.2003, which was Sunday, at 08.30 PM. That order is under challenge in Appeal From Order No.69 of 2003.

The relief/s prayed in Special Civil Suit No.17 of 2003 is as under:

> "(A) that a declaration and permanent injunction be granted that the defendant no.1 is not the Acharya of the Swaminarayan Sampradaya of the southern diocese and therefore has no authority or right to carry out act of any nature whatsoever.

(B) That it be declared that the defendants no.2 to 9 have no authority to appoint and accept the defendant no.1 as Acharyashri.

(C) That it be declared that Acharyashri Ajendraprasadji Narendraprasadji Pande is the Acharya of the southern diocese of Swaminarayan sect/ Sampradaya.

(D) That it be declared that all acts and Resolutions done on 31.01.2003 be declared as illegal and unauthorised.”

80. Mr.Thakkar, the learned senior counsel appearing for the appellants in Appeal From Order No.69 of 2003 submitted that his first and foremost submission is that if it is deemed proper the reasons recorded by the learned Judge (Coram: P.B. Majmudar, J.) while disposing of Civil Application No.1411 of 2003 in Appeal From Order No.69 of 2003 in his judgement dated 27.02.2003 be accepted in toto and for the very same reasons this Appeal From Order be allowed.

He submitted that in the alternative it be held that Special Civil Suit No.17 of 2003 has become infructuous. He submitted that the plaintiffs have rightly not

pursued the same though a liberty was in their favour. He invited attention of this Court to para 19 which reads as under:

> "19. The trial court shall now proceed with exh.5 on its own merit. Since the trial court at the time of deciding Exh.5 has considered in great details, the point involved in the matter at an ex parte stage, it would be desirable that this application Exh.5 be decided by another Judge. Under the circumstances, the learned District Judge, Nadiad, is directed to assign this matter, i.e. Special Civil Suit No.17/2003 to another Civil Judge (SD) at Anand, and if there is no other Senior Division Court at Anand, the matter may be assigned to another Senior Division Judge at Nadiad. .. .."

The learned counsel submitted that the plaintiffs-opponents herein (Appeal From Order No.691 of 2003), have not moved the learned Judge of the trial court for deciding Exh.5 as directed by this Court. He submitted that this shows that the plaintiffs have lost interest in the subject matter. He submitted that besides the aforesaid two submissions on merits also the appellants have a very good case. He submitted that the present

Appeal From Order is filed challenging the ex parte order which was granted by the learned Judge on **Sunday,** at **08.30 PM**, without recording any reason for which such an order was required to be passed. He submitted that under Order XXXIX, Rule 3 of the Code of Civil Procedure, it is mandatory for a Judge to issue notice to the opposite party before granting an injunction, except in a case where it appears that the object of granting the injunction would be defeated by the delay. The proviso to Rule 3 of of Order XXXIX provides that, where it is proposed to grant an injunction without giving notice of the application to the opposite party the court shall record the reasons for its opinion that the object of granting injunction would be defeated by delay.

(emphasis supplied)

The learned senior counsel read the entire order dated 16.02.2003. He submitted that the learned Judge of the trial court has not recorded any reason for which he was of the opinion that the object of granting injunction would be defeated by delay. The learned Judge of this Court rejected all the contentions raised by the opponents after considering the same in light of various decisions cited by the learned advocate. The learned Judge of this Court suspended the order of the trial

court assigning detailed reasons for the same in its order dated 27.02.2003.

The learned senior counsel for the appellants (Appeal From Order No.69 of 2003) invited the attention of this Court to para 18 also of the judgement which reads as under:

> "I am conscious of the fact that detailed reasons are not required to be given at this interim state as it may prejudice the case of either side, however, since Mr.Vakil has requested that all his arguments may be taken into consideration and detailed reasons be assigned, such reasons are given. The order of the trial court is accordingly suspended during the pendency of the present Appeal From Order. It is also required to be noted that the learned trial Judge has also referred the same material which is already considered by this Court in Appeal From Order No.421/ 2002, i.e. judgement of Gonda Court, Civil Court, Ahmedabad, the order of the High Court in First Appeal as well as some religious books and yet, the trial court has granted injunction which is not granted by

the High Court.”

81. The learned senior counsel Mr.Thakkar next submitted that the suit (Special Civil Suit No.17 of 2003) was filed on 16.02.2003 as a last resort because all attempts of the opponents-original plaintiffs-appellants in Appeal From Order No.421 of 2002 failed. (1) They could not get any order in Civil Application No.611 of 2003 filed before this Court on 01.02.2003. (2) An attempt was made to get some favourable order by filing Regular Civil Suit No.41 of 2003 in the Court of the learned Civil Judge (JD), Gadhada on 01.02.2003. (3) An attempt was also made by filing Regular Civil Suit No.46 of 2003 in the Court of the learned Civil Judge (SD) at Surat on 05.02.2003. Finally, they succeeded in obtaining ex parte injunction in Special Civil Suit No.17 of 2003 at Anand. The learned senior counsel invited the attention of this Court to the relevant portion of the order passed by the learned Judge wherein he has recorded that 'it was brought to his notice that the defendants are likely to appoint new Acharya, as High Court has not granted any injunction. That being so, the learned Judge ought to have restrained himself from granting an ex parte injunction.

The learned senior counsel submitted that the fact that new Acharya is already appointed on 31.01.2003 who is effectively functioning till date and the question of deposing the earlier Acharya is large open in pending proceedings before this Court, the suit (Special Civil Suit No.17 of 2003) be held to have become infructuous, because in case the Court holds the deposition (removal) to be not valid, the consequences will follow.

Appeal From Order No.69 of 2003 :

Learned senior counsel Mr.Thakkar further submitted that this Appeal From Order is required to be entertained and allowed in light of the observations made by the Hon'ble the Apex Court in the case of **A. Venkatasubbiah Naidu Vs. S. Chellappan and others,** reported in 2000 (7) SCC 695. The learned counsel submitted that under Order XLIII, Rule 1 of the Code of Civil Procedure, an appeal can be filed only against an order passed under Rules 1, 2, 2A, 4 or 10 of Order XXXIX of the Code, the present Appeal From Order is required to be entertained because what is complained in this Appeal From Order is that the learned Judge of the trial court has failed to carry out the mandate under Rule 3 of Orders XXXIX of the Code. He submitted that in the case before the Hon'ble the Apex Court, the mandate under Rule 3A, Order XXXIX, was

flouted and there the Hon'ble the Apex Court observed as under:

> “21. .. .. Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2A, 4 or 10 of Order 39 of the Code in terms of Order 43, Rule 1 of the Code. He cannot approach the appellate or revisional court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party which does not get justice due to the inaction of the court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39, Rule 3A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3A. In

> appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule." (emphasis supplied)

82. Learned senior counsel Mr.Thakkar next relied upon a decision of the Hon'ble the Apex Court in the matter between **State of Punjab Vs. Gurdev Singh, Ashok Kumar**, reported in A.I.R. 1991 SC 2219. The learned senior counsel submitted that unless an act is declared to be void or a nullity by the competent body or court, it remains effective for its ostensible purpose. The learned counsel relied upon the observations of the Hon'ble the Apex Court made in paras 6, 7 & 8. The learned counsel emphatically submitted that as observed by the Hon'ble the Apex Court in para 8 the appellants of Appeal From Order No.421 of 2002 shall approach the Court

for a 'declaration' that 'deposition of the appellant as Acharya is inoperative and not binding upon him'. He submitted that in the present case the deposed Acharya did file a suit being Special Civil Suit No.45 of 2002, but then for the reasons best known to him he did not pursue the same. The learned senior counsel submitted that in his respectful submission the present litigation has lived its life and nothing further remains to be done. He submitted that if at all appellant no.1 wants any effective relief, then he will have to establish independently that his deposition is unlawful, may be on the ground that the same is by a body which had no authority. Until that is done and until a declaration form the competent court is obtained, he will not be able to have any effective relief in the present proceedings. He submitted that this submission is made keeping in view the nature of relief sought for in Special Civil Suit No.156 of 2002 and Special Civil Suit No.17 of 2003. He submitted that in none of these suits the act of Satsang Mahasabha of deposing Acharya is directly under challenge. In Special Civil Suit No.156 of 2002 what is sought for is that an individual who was holding the office of Acharya, who is already deposed by 'Satsang Mahasabha' should be injuncted from acting as Acharya. In Special Civil Suit No.17 of 2003 what is

prayed for is a declaration to the effect that defendant no.1-Rakeshprasadji is not an 'Acharya' of southern diocese of Swaminarayan Sampradaya, and that defendant no.1 has no right or authority to act in any manner and he be restrained by a permanent injunction. The learned senior counsel submitted that without challenging the act of deposition (removal) of Shri Ajendraprasadji and appointment of Rakeshprasadji directly in a substantive proceedings no meaningful adjudication can take place.

83. Replying to the aforesaid submissions learned senior counsel Mr.Y.N. Oza submitted that Appeal From Order No.69 of 2003 is required to be dismissed for the reasons that as stated in para 12 of the plaint (Special Civil Suit No.17 of 2003) as the act of appointing new Acharya is nothing but an attempt to over-reach the Court. He submitted that it is specifically pleaded in para 12 of the plaint that when the matter of deposition (removal) of earlier Acharya, Ajendraprasadji was subjudice before this Court in Appeal From Order No.421 of 2002 and Civil Application for stay being Civil Application No.7250 of 2002 was under consideration which was disposed of by judgment and order dated 30.01.2003 and till then a statement to the effect that a new Acharya will not be appointed was in operation, which was not extended by the

learned advocates for the opponents on a lame excuse that clients are not present in the court, only with a view to see that Appeal From Order No.421 of 2002 becomes infructuous. New Acharya is appointed unauthorisedly in late night hours of 30.01.2003 and early morning hours of 31.01.2003. He submitted that in fact the 'right to appoint new Acharya' is vested in 'the outgoing Acharya'. He submitted that 'Acharya' is appointed for entire southern diocese and not only for Vadtal Temple, he submitted that southern diocese includes temples situated at two other temples situated at Gadhada and Junagadh, which are also of no less importance. He submitted that the appointment of new Acharya is not approved by the management of these two temples. Learned senior counsel, Mr.Oza next submitted that in view of the fact that there is a scheme in operation framed by this Court for Vadtal Swamy Narayan Temple and by the District Court for the aforesaid two temples. No appointment could have been made without following the necessary procedure. He submitted that under the Scheme framed by this Court 'Acharyashree' is the 'custodian trustee' and hence without following the provisions of the Bombay Public Trusts Act neither the old Acharya could have been removed nor new Acharya could have been appointed. He submitted that therefore, Acharya

Ajendraprasadji continues to be in office, appointment of defendant no.1-Rakesh Prasadji is of no consequence and the order passed by the learned Judge, Anand below Exh.5 in Special Civil Suit No.17 of 2003 must be allowed operate.

84. Learned senior counsel Mr.Oza next submitted that Special Civil Suit No.17 of 2003 is though filed by only two persons, but the same is filed in the representative capacity. He submitted that the order passed below Exh.5 on 16.02.2003 was served to the present appellants (Appeal From Order No.69 of 2003) on the same day, i.e. 16.02.2003. He submitted that thereafter on 20.02.2003, a Misc. Civil Application was filed for transfer of Anand Suit to Nadiad under sec.24 of the Code of Civil Procedure and thereafter on a later date, i.e. on 25.02.2003, the present Appeal From Order No.69 of 2003 is filed without explaining the delay. He submitted that this delay is very crucial because the order passed on 16.02.2003 was to operate only upto 26.02.2003 and on that day the appellants did appear before the trial court.

He submitted that on 25.02.2003 Appeal From Order No.69 of 2003 was adjourned to 26.02.2003 at the request of

the learned advocate appearing for the opponents. He submitted that on 27.02.2003 the Court passed an order admitting the Appeal From Order but rejecting Civil Application No.1411 of 2003, by a detailed order. He submitted that these facts be taken into consideration before entertaining this Appeal From order.

10th October 2005

The learned senior counsel on instructions from Mr.Parikh made submissions in Appeal From Order No.421 of 2002 also as senior counsel Mr.Vakil was not available on account of his ill health. He submitted that the learned Judge (Civil Judge, Senior Division, Nadiad) has committed an error in granting interim relief at the initial stage and then confirming the same on 01.10.2002. He submitted that the learned Judge was pleased to grant the interim relief as he was given to understand that the injunction granted by Bhavnagar Court was in operation. He submitted that in fact the order passed by Bhavnagar court below Exhibits 5 & 19 stood vacated by order of this Court dated 14.08.2002 (Coram: Ms.R.M. Doshit, J.). He submitted that the aforesaid fact is borne out from the order which reads as under:

> "In view of the statement made by Mr.Shah,

> neither the appeal nor revision application shall survive. The appeal and revision application are accordingly disposed of. The impugned orders made by the court below applications, Exh.5 & 19 stand vacated. On the plaintiffs making application to that effect the court below shall return the plaint to the plaintiffs for presentation before appropriate forum. .. .. “

The learned senior counsel Mr.Oza submitted that the aforesaid submissions find support from the ex parte order granted by the learned Judge (Nadiad) on 06.09.2002.

85. The learned senior counsel next submitted that Special Civil Suit No.156 of 2002 is filed by as many as three persons only and that too in their personal capacity, out of 1700 Sants/ Sadhus/ Tyagis and about 50 lakh Haribhaktas/ Satsangis of southern diocese. He submitted that in fact, plaintiff no.3 had filed an application on 15.06.2002 before Bhavnagar Court for being deleted. Still he is shown as plaintiff and that application was allowed as plaintiff no.3 in Special Civil Suit No.156 of 2002.

86. The learned senior counsel Mr.Oza submitted that at the time of admission hearing of this Appeal From Order (A.O. No.69 of 2003) it was argued by Mr.Vakil that this Appeal From Order is filed only by defendant no.2 and not by defendant no.1 and other defendants. Therefore, the order of injunction by which defendant no.1 is prevented from acting as Acharya will survive against him even if this appeal is allowed.

Learned senior counsel Mr.Oza submitted that though this aspect of non filing of appeal by defendants no.1 and 2 to 9 was discussed at the time of admission hearing and Mr.Shelat, learned senior counsel had made an oral request to allow them to be transposed as appellants or in the alternative to allow them to make necessary written application in this behalf. Though the Court did not grant the oral request, no application is filed and served to the present opponents.

Mr.Shelat, the learned senior counsel submitted that as the Court has granted injunction against defendant no.2 (appellant in Appeal From Order No.69 of 2003) he has all the rights to challenge the same. He submitted that the present appeal is not only maintainable at the

instance of defendant no.2 alone, but the relief prayed for, once granted must operate for the benefit of all. He submitted that the learned advocate, Shri Mrugen Purohit is appearing for respondent no.3-original defendant no.1 and the learned advocate Mr.Amar Mithani is appearing for respondents no.4 to 10, i.e. defendants no.3 to 9. Thus, all are duly represented by the respective advocates. The learned senior counsel Mr.Shelat, who is appearing for respondents no.4 to 10 (in Appeal From Order No.69 of 2003) further submitted that his clients are supporting the contentions raised by the appellant and he submitted that he be allowed to reiterate his request, which was made at the time of admission hearing of this matter that they be allowed to be transposed as co-appellants in this Appeal From Order (AO No.69 of 2003). Mr.Shelat submitted that at the time of admission hearing it was prayed in the alternative that his clients be allowed to make necessary application for this purpose.

At this juncture, Mr.Mrugen Purohit, the learned advocate appearing for respondent no.3-original defendant no.1 submitted that he had filed a Civil Application being No.9003 of 2005 on 16.06.2003, but through inadvertence the same could not be moved for admission hearing. He

requested that the papers of the said Civil Application be called for and the same be allowed.

The request made by the learned advocate is granted. The papers of the Civil Application are called for. Civil Application No.9003 of 2005 in Appeal From Order No.69 of 2003 is filed seeking permission to allow the applicant-original respondent no.3 in Appeal From Order No.69 of 2003-defendant no.1 in Special Civil Suit No.17 of 2003, as co-appellant in the Appeal From Order.

At the initial stage the application was opposed and objected to, but then in view of the fact that Mr.Mrugen Purohit, the learned advocate himself has filed his own affidavit, the learned senior counsel Mr.Oza did not press the ground of delay. Having heard the learned advocate for the applicant and having perused the affidavit filed by the learned advocate for the applicant this application is allowed. The applicant is allowed to be transposed as appellant no.2 in Appeal From Order No.69 of 2003.

87. Mr.Oza, the learned senior counsel next submitted that it is clear from the record, particularly, from the judgement and order in Appeal No.62 of 1919 that at the

relevant time meeting of 'General Assembly' (Dharm Sabha) was convened after due notice to the public at large. He submitted that at present the so called “Satsang Mahasabha” was not convened after notice. He submitted that the Court can verify this fact as it is important for the purpose of deciding the legality and validity of the resolution passed in the meeting of “Satsang Mahasabha”. Besides, the constitution of Satsang Mahasabha, its competence, procedure adopted for holding meeting, non-observance of principles of natural justice in the matter of deposing (removing) Acharyshree Ajendraprasadji are the crucial factors which should not be lost sight of. He submitted that the Resolution dated 11.05.2002 is non existent in the eye of law and that resolution is made the basis for granting injunction on 01.10.2002 by the learned Judge (Civil Judge, Senior Division, Nadiad), the Appeal From Order No.421 of 2002 must succeed. The order passed by the learned Judge must be quashed and set aside by this Court.

88. The learned senior counsel Mr.Oza submitted that as mentioned in the precepts of Sampradaya, 'Acharya' is considered to be 'incarnation' of 'Shri Sahjanand Swamy'. Therefore, appointment of 'Acharya' has to be as laid down by 'Shri Sahjanand Swamy' himself in 'Desh Vibhag No Lekh'. He submitted that even at the cost of repetition

he be allowed to reiterate that in no uncertain terms it is mentioned in 'Desh Vibhag No Lekh' that the outgoing Acharya is to nominate his successor as he is the supreme religious head. He submitted that very little restrictions/ limitations are imposed by the executor- Shri Sahjanand Swamy Maharaj, on the outgoing Acharya and with a view to see that the wishes of the followers of the Sampraday are implemented peacefully.

89. The learned senior counsel submitted that it is clear from the 'Desh Vibhag No Lekh' that it is only the outgoing Acharya who has to nominate his successor as he has the power, authority/ right and the same does not come to an end even if he is sought to be removed. He submitted that in the past it so happened that the outgoing Acharya could not nominate his successor, but then the same has no bearing on the facts of this case. He submitted that assuming for the sake of argument that Acharya Laxmiprasadji was deposed by congregation and that he was not allowed to nominate his successor, that does not wipe off the clear direction given by the founder of Sampradaya, Shri Sahjanand Swami in 'Desh Vibhag No Lekh'. He submitted that there it is provided that it is the Acharya who is to nominate his successor. In this regard the learned senior counsel relied upon the

decision of the Hon'ble the Apex Court in the matter of **Baba Charan Dass Udhasi Vs. Mahant Basant Das Babaji Chela Baba Laxmandas Udasi Sadhu,** reported in A.I.R. 2000 SC 2610. The learned senior counsel submitted that in the case before the Hon'ble the Apex Court it was the right of Mahant to appoint his successor, when Mahant died without appointing/ nominating his successor, new Mahant was appointed by 'Allahabad Society'. It was later on contended that right of Mahant to nominate his successor has come to end. The Hon'ble the Apex Court negatived the contention and held that right of Mahant to appoint his successor survives.

The learned senior counsel, Mr.Oza very vehemently contended that the persons who claim to have constituted the 'Satsang Mahasabha' have in fact acted contrary to the basics/ fundamentals laid down in the religious precepts of Swaminarayan Sampradaya and therefore, as provided therein, they cease to be disciples of Shri Sahjanand Swamy Maharaj. Therefore, any act done by them is of no consequence.

90. The learned senior counsel Mr.Oza submitted that in fact there is no precedent of deposing (removing) an 'Acharya' by 'Dharm Sabha'. The solitary instance of

Shri Laxmiprasadji is referred to as an incident of 'deposition (removal) of 'Acharya' by the congregation (erstwhile Dharmsabha, presently referred as Satsang Mahasabha) was not the deposition (removal) at all. He submitted that the facts are required to be scrutinised little minutely, which are set out in the judgment of the Bombay High Court, to know that it was a case of abdication of office by the then Acharya-Shri Laxmiprasadji. He submitted that it is a matter of record that Shri Laxmiprasadji had executed a deed, a copy of which was produced at Exh.1742 in those proceedings. He submitted that in Hindu Mythology 'Amavasya'– 'no-moon day' is not considered to be an auspicious day. 30th /31st January 2003 was an 'Amavasya'. On that day installation of new Acharya could not have taken place. He submitted that if in light of the aforesaid events which took place are considered it becomes clear that the act of installing a new Acharya was undertaken to over-reach the process of court.

Mr.Oza, the learned senior counsel submitted that the matter pertaining to deposition (removal) of Acharya Ajendraprasadji was under active consideration of this Court in Appeal From Order No.421 of 2002 and Civil Application No.7250 of 2002 was already heard and order

was reserved. This order was pronounced on 30.01.2003. On pronouncement of the order a request was made to the learned Judge which is incorporated in the order in the form of, 'further order'. Request was made for placing Appeal From Order No.421 of 2002 on a final hearing board in the first week of February 2003. The same was granted and the office was directed to place the Appeal From order before appropriate court in the first week of February 2003 after obtaining appropriate orders from the Hon'ble the Chief Justice.

The learned senior counsel Mr.Oza submitted that after the first 'further order', 'second further order' was passed recording that after the first further order, Mr.A.S. Vakil, learned counsel for the appellants/ applicants entered the court along with the learned senior counsel Mr.P.M. Raval and Mr.P.G. Desai and requested that the statement made at the Bar by the learned senior counsels for respondents no.1 & 2 that they will not appoint new Acharya be extended. But then as recorded by the learned Judge, Mr.P.M. Raval, the learned senior counsel expressed his inability to extend the statement as respondents no.1 & 2 were not present in the Court on that day. It was stated by the learned senior counsel (Mr.P.M. Raval) that the statement was

made with the consent of his client, therefore, in absence of their client it was not possible to extend the same. That being so, the learned advocate Shri A.S. Vakil requested the Court that in that case the Appeal From Order be directed to be listed before the concerned court tomorrow (i.e. 31.01.2003). The learned Judge granted that request and directed the office to place the Appeal From Order before the appropriate court after obtaining appropriate orders from the Hon'ble the Chief Justice.

The learned senior counsel Mr.Oza submitted that it is in light of the aforesaid facts the conduct-an act of appointing new 'Acharya' in late night hours of 30th and early morning hours of 31st January 2003 be appreciated.

91. The learned senior counsel Mr.Oza contended that the other side, with the sole purpose in mind of over-reaching the process of court appointed 'new Acharya'. He vehemently submitted that this is a fit case in which the court should exercise its discretion and should see that the person who is appointed as 'Acharya' is not allowed to function as Acharya. The learned counsel in support of his submissions relied upon a decision in the matter of **Patel Jasmat Sangaji Vs. Gujarat Electricity**

Board and others, reported in XXIII 1982 (2) G.L.R. 104, para 9 of which reads as under:

> "9. It was rightly apprehended that this view, if taken, would open gates for flooding the appellate courts with appeals and more often than not the original defendants would rush to the appellate court and wold not allow the normal procedure laid down by Rule 3 of Order 39 of the Code to be complied with. On careful consideration of this argument, we find that it is untenable. It proceeds on the assumption that the appellate courts will readily entertain and admit such appeals and with equal readiness suspend the operation of injunctions. We, on the contrary, find that the appellate authorities would be loath to entertain and admit such appeals and they may, in normal cases, summarily reject such appeals for want of any material placed before them to challenge the ex parte tentative decision of the trial Judge. They would be still more unwilling to suspend the judicial order of injunction passed by the judicial authority below. In other words, in the rarest of rare cases they would

admit such appeals and still more in the rarest of rare cases, they wold ex parte suspend the operation of the ex parte tentative injunctions. This power of the appellate court,therefore, is a sufficient safeguard against the possible danger ventilated in respect of the outcome of this decision of ours. This means that (as per our judgement) such an appeal is technically competent, but the appellate court will exercise it cautiously by viewing all the relevant factors at the time of admission of such appeals."

The learned counsel also relied upon a decision of this Court in the matter of **Sujal Leasing & Finance Ltd. Vs. Pathal Ganga Tube Well,** reported in 1998 (2) GLH (UJ) 1. The learned counsel next relied upon a decision of the Hon'ble the Apex Court in the matter of **M.V. Venkataramana Bhat Vs. Returning Officer and Hildagard's and others,** reported in A.I.R. 1994 SC 1431.

92. The learned senior counsel Mr.Oza next submitted that the order passed by the learned Judge (Civil Judge, Nadiad) below application-exh.5 in Special Civil Suit No.156 of 2002 was delivered in the forenoon on 01.10.2002. He submitted that this order is running into

45 typed pages. He submitted that this aspect assumes much significance because arguments were completed on the previous day, i.e. 30.09.2002, that too at the end of the day and after the arguments, written submissions were concluded running into 23 pages along with documents running into 300-400 pages were tendered in the court. He submitted that the order has not only dealt with the written submissions but even the documents find reference therein. He submitted that therefore, without any difficulty the order can be termed as a hasty and haphazard one. He submitted that one can derive an inevitable conclusion from the facts aforesaid that the order is the product of non application of mind.

93. The learned senior counsel Mr.Oza at this juncture requested this Court to peruse certain pages of the Paper Book produced before the Hon'ble the Apex Court, relating to arbitration/ mediation proceedings which were before the Hon'ble Mr.Justice S.D. Dave (Retired) between these very parties to exhibit the conduct of the other side.

94. This Court did not grant the request as it is of the considered opinion that the same is not relevant. The conduct of the parties before the learned retired High Court Judge in arbitration/ mediation proceedings cannot

be taken into consideration as the same is beyond the scope of the present proceedings.

95. Learned senior counsel Mr.Oza appearing for the appellants (Appeal From Order No.421 of 2002) submitted with all vehemence at his command that the question of jurisdiction is a question which goes to the root of the matter. He submitted that the Civil Court has no jurisdiction as submitted hereinabove, particularly in light of the bar under sec.80 and other relevant provisions of the Bombay Public Trusts Act. He submitted that according to him it will be a futile exercise to go on with the trial. He submitted that the Court may accept his submission that the learned Civil Judge (SD), Nadiad has no jurisdiction and therefore, the order passed be quashed forthwith. He submitted that lack of jurisdiction strikes at the very root of the matter and the court is rendered without any authority to pass any order in the matter. In support of his submission learned senior counsel relied upon a decision of the Hon'ble the Apex Court in the case of **A.R. Antulay Vs. R.S. Nayak,** reported in A.I.R. 1988 SC 1531. In para 38 the Hon'ble the Apex Court has referred to its earlier decision in the case of **Kiran Singh Vs. Chaman Paswan** reported in (1955) 1 SCR 117 : A.I.R. 1954 SC

340. Para 38 reads as under:

> “38. .. .. Venkataramana Ayyar, J. observed that the fundamental principle is well established that a decree passed by a court without jurisdiction is a nullity, and that its validity could be set up whenever and wherever it is sought to be enforced or relied upon even at the stage of execution and even in collateral proceedings. A defect of jurisdiction whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.”

The learned senior counsel submitted that in the case on hand also once it is held that the Court has 'no jurisdiction' the order below Exh.5 is a nullity.

Appeal From Order No.421 of 2002:

The learned senior counsel for the appellant submitted that the document, 'Desh Vibhag No Lekh' be interpreted

giving meaning to its plain words. He submitted that it is clearly mentioned in the document, 'Desh Vibhag No Lekh' that it is only the 'outgoing Acharya' has the power to nominate his successor as Acharya. He submitted that in view of the contents of the 'Lekh' nothing further is required. He submitted that even if there is any decision to the contrary stating that right/ power to appoint a successor-Acharya is with a person/ body other than the outgoing Acharya, the same is required to be discarded. In support of this submission he relied upon a decision of the Hon'ble the Apex Court in the matter between **Nirshi Dhobin and another Vs. Dr.Sudhir Kumar Mukherjee**, reported in A.I.R. 1969 SC 864. He relied upon the following observations of the Hon'ble the Apex Court in para 14 of the judgement.

> “14. The rule that 'where terms of a Statue or Ordinance are clear then even a long and uniform course of judicial interpretation of it may be overruled, if it is contrary to clear meaning of enactment' is inapplicable to decisions on the basis of which titles and transactions must have been founded.”

96. The learned senior counsel Mr.S.I. Nanavati

appearing with Mr.Pushpdatta Vyas for the applicant in Civil Application No.4429 of 2004 in Appeal From Order No.421 of 2002 filed seeking permission for the applicant to be joined as party respondent, to support the appellant and also in Civil Application No.4430 of 2004 in Appeal From Order No.421 of 2002 filed for stay, made his submissions.

The applicant in both these applications is the trust of 'Gadhada Temple' of Shree Gopinathdev. These applications are filed through the Chairman-Shri Prasad Bhanaj Bhagat. It is prayed in Civil Application No.4429 of 2004 that, 'the applicant be impleaded as respondent no.4 in Appeal From Order No.421 of 2002'. The only ground set out in the application is that the order passed by the learned Judge (Joint Civil Judge, Nadiad) in Special Civil Suit No.156 of 2002 vitally affects the applicant-trust. It is submitted that therefore, trust was required to be joined as party-defendant in the suit. It is averred in the Civil Application that the applicant-trust is managing the temple at 'Gadhada' which is completing 175 years this year and in all functions the presence of 'Acharyashree' is necessary. From the averments made in the Civil Application it is clear that the applicant-trust is to support opponents no.1 & 2. It is averred in the Civil Application that,

> “.. .. If the applicant trust approaches the learned Civil Judge (SD), Nadiad for being joined as party, the applicant trust have got no dispute regarding the management of Vadtal trust. The applicant is interested only to stay the order against the applicant-trust and against the stay order the appeal from order is pending for judgement. Hence the applicant is required to be heard being affected party and the presence of applicant is must.”

97. Mr.Nanavaty, the learned senior counsel submitted that this Court may consider the aforesaid averments in the Civil Application in light of the fact that 'Acharya' is not appointed for Vadtal temple only, 'Acharya' is for the entire southern diocese and Gadhada temple is one of the temples of southern diocese and it is vitally affected by the controversy of deposition (removal) or appointment of Acharya. Therefore, the applicant be ordered to be impleaded as respondent in the Appeal From Order (AO No.421 of 2002). Mr.Nanavaty, the learned senior counsel submitted that it is true that the applicant-temple trust is operating under a scheme framed under the orders of the District Court, but then the

person appointed as 'Acharya' of southern diocese is the 'Acharya' for the applicant trust also, and therefore, the applicant trust is vitally affected by deposition and appointment of Acharya at Vadtal-southern diocese. The learned senior counsel submitted that the phrase, 'temple committee' refers to all the temple committees, be it at Vadtal, Gadhada or Junagadh. The learned senior counsel also submitted that the controversy of 'deposition' or 'appointment' of Acharya is directly affecting even day to day working of the applicant-trust. He submitted that therefore, not only Civil Application No.4429 of 2004 be allowed, but even Civil Application No.4430 of 2004 be also allowed and injunction order granted by Nadiad Court be vacated.

98. Mr.P.M. Thakkar, the learned senior counsel vehemently opposed these two Civil Applications. He submitted that the plaintiffs of Special Civil Suit No.156 of 2002 are ready to take the consequences of not impleading the applicant trust in the event it is held to be a necessary party or even proper party. He submitted that the application for joining party deserves to be rejected on the short ground that the applicant has not made any application before the trial court. Mr.P.M. Thakkar, learned senior counsel relied upon a decision of

this Court in the matter of **Ganesh Cooperative Housing Society Limited Vs. Ishwarbhai Keshavbhai Patel**, reported in 2002 (1) GLR 159. The learned counsel submitted that this Court has held that a Civil Application by a party seeking relief of being joined as party to the proceedings at the appellate stage should not be entertained, if the party has not approached the learned Judge of the trial court with a similar request. The learned senior counsel invited attention of the Court to para 12, 13 & 14 of the said judgement.

Mr.Thakkar, the learned senior counsel in support of his submission that the application for joining party deserves to be rejected on the short ground that the applicant has not made any application before the trial court, relied upon the decision of this Court in the matter of **Ganesh Cooperative Housing Society Limited Vs. Ishwarbhai Keshavbhai Patel**, reported in 2002 (1) GLR 159, wherein this Court was pleased to hold that,

> ".. .. Therefore, unless and until a party is not (sic) a party in a suit, cannot be joined as party in Appeal From Order even the appellate Court cannot exercise the power of the trial Court under sec.146 of the Civil Procedure Code

while dealing with the Appeals From Order beyond the scope of order which is under challenge. .. ..”

The learned senior counsel, Mr.P.M. Thakkar submitted that the plaintiffs are aware of the nature and scope of the suit. He submitted that the reliefs prayed for in the suit are not against an Acharya. It is only a private person who is sought to be injuncted from acting as Acharya as he is already deposed (removed) as Acharya. Besides, the learned counsel submitted that the plaintiffs of Special Civil Suit No.156 of 2002 have not sought for any relief against the present applicant. Therefore, the applicant is not a proper/ necessary party.

99. The learned senior counsel Mr.P.M. Thakkar further submitted that the most relevant fact is not disclosed to this Court that this very trust had filed Regular Civil Suit No.194 of 2002 in the Court of learned Civil Judge (SD), Bhavnagar on 20.05.2002 along with Exh.5 application. There the Court had issued urgent show cause notice on the same day, i.e. 20.05.2002 making it returnable on 24.05.2002. The Registry was to issue notice on payment of the process fee along with the copies of plaint and Exh.5, application. The learned

senior counsel has produced a xerox copy of the certified copy to show that on 19.09.2003 the suit was dismissed because the plaintiffs did not pay any process fee for quite long, hence under the provisions of Order IX, Rule 5 of the Code of Civil Procedure, the suit was dismissed. In view of the order passed below Exh.1, a consequential order was passed below exh.5 also. Mr.Thakkar submitted that from these facts real cause of filing this application can be gathered. He submitted that in fact this application is filed under some pressure, with a view to show that the applicant is supporting the appellant of Appeal From Order No.421 of 2002.

100. Having taken into consideration the rival submissions the Court is of the opinion that Civil Application No.4429 of 2004 does not deserve to be entertained by this Court and the same is dismissed. However, it is clarified that <u>if at all the applicant is interested he may move the learned Judge of the trial court by filing appropriate application which will be considered by the learned Judge in accordance with law.</u> (emphasis supplied)

101. So far as Civil Application No.4430 of 2004 is concerned in view of the order passed in Civil

Application NO.4429 of 2004, the same does not survive. Besides, this application was filed praying to vacate the stay so as to see that opponent no.1 herein-Shri Ajendraprasadji is able to attend celebrations, which were to be held to mark 175th anniversary of the temple, does not survive due to lapse of time. In view of that this Civil Application is disposed of accordingly.

102. So far as Civil Application No.2526 of 2003 is concerned the same is filed by as many as 21 persons, of whom majority are from District Amreli, while some are from Districts Bhavnagar, Jamnagar, Kheda and Rajkot. All these persons have averred that they are the followers of Swaminarayan Sampradaya and have applied to opponent no.1 herein-Shri Ajendraprasadji on various dates for giving 'Deeksha'. It is further averred in the Civil Application that opponent no.1 herein has replied to them on 08.03.2003 that as the matter is subjudice before this Court, Deeksha cannot be given to them without the permission of the Hon'ble Court. It is further averred in the application that opponent no.1 is the only competent person to give 'Deeksha' as per the religious precepts including 'Desh Vibhag No Lekh'. It is also averred in this Civil Application that it is only the 'Acharya' who can give 'Deeksha', according to the

religious tenets after testing or subjecting 'Deeksharthis' to testing. It is also averred in the application that 'Ram Navmi' being an important day-the birth day of Lord Swaminarayan, Deeksha is to be given on that day, which is on 11.04.2003. It is then averred that the applicants are therefore, proper and necessary parties in the Appeal From Order and they be permitted to be impleaded as party.

Mr.Oza, the learned senior counsel strenuously submitted that the application is required to be allowed and the applicants are required to be impleaded as party respondents.

Mr.P.M. Thakkar, learned senior counsel opposing these applications submitted that as submitted for the same reasons which are submitted in those other similar applications, this Civil Application is also not maintainable. He submitted that these applicants have also not approached the learned Judge of the trial court and therefore, this application does not require to be entertained. The same is disposed of accordingly.

In view of the order passed in Civil Application No.2526 of 2003, no orders are required on Civil Application

No.2527 of 2003. The same is disposed of accordingly.

Having taken into consideration the rival submissions this Court is of the opinion that like other Civil Application No.4429 of 2004, this Civil Application is not required to be entertained. The Civil Application is rejected.

103. Civil Application No.611 of 2003 is filed on 01.02.2003 by the appellants of Appeal From Order No.421 of 2002. As mentioned hereinabove, this Civil Application was filed after Civil Application No.7250 of 2002 in Appeal From Order No.421 of 2002 was rejected by this Court on 30.01.2003. By this application, the applicants have prayed that the opponents be restrained from appointing or causing to be appointed any Acharya against the alleged vacancy, which is sought to be created by the deposement of applicant no.1, during the pendency of the Appeal From Order. Besides, it is also prayed that operation, implementation or execution of appointment, if any, made of the new Acharya or further operation, implementation or execution of the appointment be stayed during the hearing and final disposal of the Appeal From Order.

To put in a nutshell the appellant (AO No.421 of 2002) had challenged his deposition (removal) as Acharya by filing Special Civil Suit No.45 of 2002, but then for no reasons he did not pursue the said suit which is still pending. In the meantime Special Civil Suit No.156 of 2002 is filed wherein initially ex parte injunction was granted on 06.09.2002 which was confirmed after biparte hearing on 01.10.2002. This order is challenged in Appeal From Order No.421 of 2002 before this Court. Special Civil Suit No.42 of 202 is still not pursued where the main dispute is raised.

It is on record that during the pendency of the present proceedings, i.e. Appeal From Order No.421 of 2002 after Civil Application No.7250 of 2002 was rejected on 30.01.2003, a new Acharya is already appointed. Not only that the injunction granted by the learned Judge (Civil Judge, Senior Division, Nadiad) on 01.10.2002 has remained operative till this date. On the other hand no order is passed in this Civil Application. The matter had gone to the Hon'ble the Apex Court.

104. It is not in dispute that so far no orders are passed on this Civil Application. Now that Appeals From Order No.421 of 2002 and 69 of 2003 are finally heard

and decided, in the considered opinion of this Court, this Civil Application does not survive and the same is disposed of accordingly.

105. Civil Application No.1411 of 2003 in Appeal From Order No.69 of 2003 which was admitted by this Court (Coram: P.B. Majmudar, J.) by issuing rule on 27.02.2003 is already allowed by the learned Judge by a well considered judgement.

106. This Court while dealing with Appeals From Order No.421 of 2002 and 69 of 2003 along with various Civil Applications filed in these proceedings, has set out the facts giving rise to these proceedings in detail which is taken into consideration by this Court while deciding these appeals.

All the submissions made by the learned counsel appearing for the rival parties are taken into consideration and the same are incorporated at length, so that it may not be said that a particular submission is not considered by the Court. Even when a legal question arising in a matter is a routine one, a matter some time assumes extraordinary importance depending upon the vehemence of the contesting parties. In the present Appeal From order

also what has fallen for consideration of this Court is, 'whether during the pendency of the suit/s order of injunction granted by the learned Judge of the trial court shall operate or shall be vacated'.

In the present litigation also the controversy did travel an unusual long journey starting from the Court of Civil Judge (SD), Bhavnagar to the Court of Civil Judge (SD), Nadiad, via the Court of Civil Judge (SD), Ahmedabad (Rural). In between the parties did approach to this Court as well as the Apex Court also. It is clear from the nature of the controversy involved in this litigation that the controversy is not going to come to an end because the real bone of contention, i.e. deposition of Acharyashree Ajendraprasadji is not adjudicated in Special Civil Suit No.156 of 2002. The plaintiffs have sought for certain reliefs, which are already set out hereinabove, on the basis that Shri Ajendraprasadji is deposed as an Acharya by Satsang Mahasabha. In the considered opinion of this Court until there is an adjudication of the 'deposition' itself, the parties will not be able to rest in peace and there will be prolonged litigations between them.

Though said Shri Ajendraprasadji did file a suit being

Special Civil Suit No.45 of 2002 in the Court of the learned Civil Judge (SD), Nadiad, he did not pursue the same. It is a matter of record that though said suit is pending, it is not pursued by the appellant of Appeal From Order No.421 of 2002 and has chosen to challenge the interim order passed below exh.5 in Special Civil Suit No.156 of 2002.

As a counterblast, another set of persons chose to file Special Civil Suit No.17 of 2003 and obtained an order which is the subject matter of Appeal From Order No.69 of 2003. Both these litigations are not going to bring an end to the controversy in absence of an effective, meaningful adjudication of the same.

107. This Court after taking into consideration all the relevant facts of the case and all rival submissions made by both the parties has found that the appellants of Appeal From Order No.421 of 2002 have no case. From the religious precepts 'Satsang Mahasabha' is not the body unknown to the 'Sampradaya'. Earlier, such body was referred to as 'Dharm Sabha' and it had an important role to play. The factum of 'non functioning' of Shri Ajendraprasadji since his deposition (removal) on 11.05.2002 cannot be ignored. The position which has

continued all along must be allowed to be continued till he (Shri Ajendraprasadji) gets his deposition set aside from a competent court. From the scheme framed by this Court it is abundantly clear that 'Acharya' has hardly any temporal duty to be discharged. He is a religious head and has to discharge only religious duties. The relief/s sought for in Special Civil Suit No.156 of 2002 are not barred by sec.80 of the Bombay Public Trusts Act. Shri Ajendraprasadji himself has taken recourse to civil remedy by filing a suit (Special Civil Suit No.45 of 2002). Allowing Shri Ajendraprasadji to function as Acharya is to cause more difficulties, in absence of the adjudication on the question of legality of his 'deposition'. Therefore, the said Appeal From Order fails and is dismissed. The appellants of Appeal From Order No.69 of 2003 have made out a case and hence the same is allowed and the order passed by the learned Judge below exh.5 in Special Civil Suit No.17 of 2003 is quashed and set aside.

108. It is clarified that rejection of Appeal From Order No.421 of 2002 does not debar the appellants from taking recourse to the remedy available to them before the learned Judge of the trial court by filing an appropriate application. Similarly, the directions issued by this

Court at the time of admission hearing of Appeal From Order No.69 of 2003 and while disposing of Civil Application No.1411 of 2003 still hold the field and the plaintiffs of Special Civil Suit No.17 of 2003 may pursue the remedy available to them.

It is also clarified that all observations made in this judgement and order are 'prima facie' and they are not to influence the learned Judge while deciding the matter on merit.

(RAVI R. TRIPATHI, J.)

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Matter No.	Subject	Result	Relevant para no.	Relevant page no.
CA No.8739 of 2005	For production of documents.	Dismissed	36	49
CA No.9003 of 2005	For transposition	Allowed	86	122
CA No.4429 of 2004	For joining party	Dismissed	100	141
CA No.4430 of 2004	For stay.	Dismissed	101	142
CA No.2526 of 2003	For joining party	Disposed of	102	143
CA No.2527 of 2003	For directions	Disposed of	102	144
CA No.611 of 2003	For interim orders	No orders. Disposed of	104	146
AO No.421 of 2002		Dismissed	107	150
AO No.69 of 2003		Allowed	107	150